INTER-AMERICAN COURT OF HUMAN RIGHTS

LABORERS AT THE HACIENDA BRASIL VERDE v. BRAZIL

20 OCTOBER 2016 JUDGMENT

(Preliminary Objections, Background, Reparations and Costs)

[UNOFFICIAL TRANSLATION]

[English translation by Suzanne Corley, Elana Bengualid Harary, and Tina Soumela]

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In *Laborers at the Hacienda Brasil Verde v. Brazil,* the Inter-American Court of Human Rights (hereinafter the "Inter-American Court", "the Court" or "this Court"), comprised of the following judges[1]:

Eduardo Ferrer Mac-Gregor Poisot, President;

Eduardo Vio Grossi, Vice-president;

Humberto Antônio Sierra Porto, Judge;

Elizabeth Odio Benito, Judge;

Eugenio Raúl Zaffaroni, Judge, and

L. Patricio Pazmiño Freire, Judge;

also present,

Pablo Saavedra Alessandri, Secretary, and

Emilia Segares Rodríguez, Deputy Secretary,

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter the "Convention" or the "American Convention") and Articles 31, 32, 42, 65 and 67 of the Rules of the Court (hereinafter the "Rules" or "Rules of Procedure"), delivers this judgment structured in the following order:

[1] Judge Roberto F. Caldas, a Brazilian, did not participate in the deliberation of the present Judgment, in accordance with Articles 19(2) of the Statute and 19(1) of the Rules of the Court.

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I.
INTRODUCTION TO THE CASE AND SUBJECT MATTER OF THE DISPUTE

1. *Case submitted to the Court*. On March 4, 2015, the Inter-American Commission on Human Rights (hereinafter the "Inter-American Commission" or "the Commission") submitted the case of *Laborers at Hacienda Brasil Verde v. Brazil* (hereinafter the "State" or "Brazil") to the Court. This case has to do with an alleged practice of forced labor and debt bondage at Hacienda Brasil Verde, located in the state of Pará. According to the allegations, the facts of the case are framed in the context of tens of thousands of workers being subjected annually to slave labor. Further allegations involve workers who successfully escaped making statements concerning death threats if they left the farm, the inability to leave of their own accord, lack of salary or the existence of a paltry salary, indebtedness to the farm owner, as well as a lack of proper housing, food or health care. Furthermore, the State is allegedly implicated in this situation, because its knowledge of these practices in general and specifically at the Hacienda Brasil Verde dates back to 1989, and in spite of said knowledge it did not adopt reasonable methods of response and prevention, nor did it provide the alleged victims with effective legal mechanisms for protection of their rights, sanction of responsible parties or procurement of reparations. Finally, it is alleged that the State bears international responsibility for the disappearance of two adolescents, disappearances which were reported to state authorities on 21 December 1988, and which allegedly did not result in any effective effort being made to locate them.

2. *Proceedings before the Commission*. Case proceedings before the Commission occurred as follows:

a) *Petition*. On November 12, 1998, the Inter-American Commission received the initial petition presented by the Pastoral Earth Commission (hereinafter "PEC") and the Center for Justice and International Law (hereinafter "CEJIL").

b) *Admissibility and Background Report.* On November 3, 2011, the Commission issued the Admissibility and Background Report No. 169/11, in accordance with Article 50 of the American Convention (hereinafter "Admissibility and Background Report"), in which it reached a series of conclusions and made various recommendations to the State.

i) *Conclusions*. The Commission concluded that the State was internationally responsible because of the following reasons:

a. Violation of the rights enshrined in Articles 6, 5, 7, 22, 8 and 25 of the Convention, in relation to Article 1(1) of the same, to the detriment of the workers of Hacienda Brasil Verde, found in the audits from 1993, 1996, 1997 and 2000.
b. Violation of the rights enshrined in Articles I, II, XIV, VIII and XVIII of the American Declaration of the Rights and Duties of Man (hereinafter "American Declaration" or "Declaration") and, as of September 25, 1992, violation of

Articles 8 and 25 of the Convention, in relation to Article 1(1) of the same, to the detriment of Iron Canuto da Silva and Luis Ferreira da Cruz, as well as their family members, including José Teodoro da Silva and Miguel Ferreira da Cruz. Additionally, for violating Article I of the Declaration and, as of September 25, 1992, Article 5 of the Convention, to the detriment of family members of Iron Canuto da Silva and Luis Ferreira da Cruz.

c. Violation of Articles I, VII and XIV of the Declaration and, as of September 25, 1992, of Articles 7, 5, 4, 3 and 19 of the Convention, in relation to Articles 8, 25 and 1(1) of the same, to the detriment of Iron Canuto da Silva and Luis Ferreira da Cruz.

d. Failure to adopt sufficient and effective measures to guarantee without discrimination the rights of workers found in the audits from 1993, 1996, 1997 and 2000, in accordance with Article 1(1) of the Convention, in relation to rights recognized in Articles 6, 5, 7, 22, 8 and 25 of the same.

e. Failure to adopt measures in accordance with Article II of the Declaration, in relation to Article XVIII of the same and, as of September 25, 1992, with Article 1(2) of the Convention, in relation to the rights recognized in Articles 8 and 25 of the same, to the detriment of workers Iron Canuto da Silva, Luis Ferreira da Cruz, Adailton Martins dos Reis, José Soriano Da Costa, and the first two individuals next of kin, among whom are José Teodoro da Silva and Miguel Ferreira da Cruz.

f. Application of the statute of limitations in the present case in violation of Articles 8(1) and 25(1) of the Convention, in relation to the obligations established in Article 1(1) and Article 2 of the same, to the detriment of workers Iron Canuto da Silva, Luis Ferreira da Cruz, Adailton Martins dos Reis, José Soriano Da Costa, José Teodoro da Silva and Miguel Ferreira da Cruz, together with the workers found at Hacienda Brasil Verde during the 1997 audits.

ii) *Recommendations.* Accordingly, the Commission recommended to the State the following:

a. Make adequate reparations in both a moral and material way for the violations of human rights. Specifically, the State must ensure that victims receive the salaries owed them for work they performed, as well as reimbursement for the sums of money illegally extracted from them. If necessary, said restitution may be taken from the farm owner's illegal profits.

b. Carry out an investigation into the facts related to human rights violations spelled out in the Admissibility and Background Report regarding slave labor and conduct these investigations impartially and effectively within a reasonable timeframe, with the objective of completely clarifying the facts, identifying responsible parties and imposing appropriate sanctions.

c. Carry out an investigation into the facts related to the disappearance of Iron Canuto da Silva and Luis Ferreira da Cruz and conduct these investigations impartially and effectively within a reasonable timeframe with the objective of completely clarifying the facts, identifying responsible parties and imposing appropriate sanctions.

d. Stipulate appropriate administrative, disciplinary or criminal measures regarding the acts or omissions of state officials that contributed to the impunity and denial of justice found in the facts of this case. To that effect, special emphasis must be placed on creating administrative instead of criminal procedures for the investigation of disappeared persons, creating administrative and labor procedures for the investigation of slave labor, and that the only open criminal investigation be limited to the crime in question.

e. Establish a mechanism to facilitate finding victims of slave labor such as Iron Canuto da Silva, Luis Ferreira da Cruz, Adailton Martins dos Reis, and José Soriano da Costa, as well as the first two individuals' next of kin, José Teodoro da Silva and Miguel Ferreira da Cruz, with the goal of making reparations to them.

f. Continue implementing public policies, as well as legislative and similar measures, meant to eradicate slave labor. Specifically, the State must monitor the efforts and sanction of persons responsible for slave labor, at all levels.

g. Strengthen the legal system and create mechanisms for coordination between legal and labor jurisdictions in order to eradicate the gaps that open up in the investigation, prosecution and sanction of persons responsible for crimes of slavery and forced labor.

h. Safeguard strict compliance of labor laws relative to day laborers and equal pay with the rest of the salaried workers.

i. Adopt all means necessary to eradicate every type of racial discrimination, in particular by conducting advertising campaigns to raise national awareness, and specifically of State officials and law officers, about discrimination and the existence of slavery and forced labor.

c) *State Notification.* The State was notified of the Admissibility and Background Report in a communication dated January 4, 2012, in which they were given a two-month timeframe to report on compliance with the recommendations. After granting 10 extensions, the Commission determined that the State had made no concrete progress in complying with the recommendations.

3. *Submission to the Court.* On March 4, 2015, "out of the necessity to obtain justice," the Commission submitted to the Court the facts and human rights violations described in the Report.[2] Specifically, the Commission submitted to the Court the state acts and omissions that occurred on or continued to occur after December 10, 1988, the day the State accepted this Court's jurisdiction,[3] without prejudice that the State could accept the jurisdiction of the Court in order to be familiar with the totality of the present case, in compliance with Article 62(2) of the Convention.

4. *Inter-American Commission Pleadings*. Based on the above, the Inter-American Commission requested that this Court declare Brazil's international responsibility for violations contained in the Admissibility and Background Report and that it order the State, by way of reparations, to comply with the recommendations included in said Report (*supra*, para. 2).

II. PROCEEDINGS BEFORE THE COURT

5. *State and Representative Notification*. The Commission submitted the case and notified the State and representatives on April 14, 2015.

6. *Brief Containing Pleadings, Motions and Evidence*. On June 17, 2015, the representatives presented their pleadings, motions and evidence brief (hereinafter "pleadings and motions brief") according to Articles 25 and 40 of the Rules of the Court.[4]

[2] The Inter-American Commission appointed Commissioner Felipe González and Executive Secretary Emilio Álvarez Icaza L. as delegates, and Assistant Executive Secretary Elizabeth Abi-Mershed and the Executive Secretary's Attorney Silvia Serrano Guzmán as legal advisors.

[3] Among said acts and omissions are: 1) the situation analogous to slavery of forced labor and debt bondage as of December 10, 1988, 2) The acts and omissions that have led to a situation of impunity in the totality of the facts of the case. This situation of impunity has prevailed from the moment of acceptance of the Court's jurisdiction until now, 3) The disappearances of Iron Canuto da Silva and Luis Ferreira da Cruz, which extended past the date of acceptance of the Court's jurisdiction.

[4] The representatives requested that the Court declare the State internationally responsible for the following: 1) Violation of the duty of the guarantee of the freedom from slavery, involuntary servitude and human trafficking, covered in Article 6 of the Convention, in relation to the rights to a legal personality, personal integrity, personal liberty and security, privacy, honor and dignity, and freedom of movement and residence, established in Articles 3, 5, 7, 11 and 22 of the Convention, to the detriment of the people found to be working at the Brasil Verde Farm as of the acceptance of the obligatory jurisdiction of the Court. This responsibility is aggravated in light of the violation of the principle of no discrimination and the rights of children, established in Articles 1(1) and 19. 2) The violation of the rights to legal protection and legal guarantees established in Articles 25 and 8, in relation to Article 1(1) of the Convention, to the detriment of the people found to be working at the Brasil Verde Farm as of the acceptance of the obligatory jurisdiction of the Court, 3) Breach of the duty to guarantee in relation to the rights to a legal personality, life, personal integrity and liberty of Luis Ferreira da Cruz, covered in Articles 3, 4, 5 and 7 of the Convention, in connection with Articles 1(1), 8 and 25 of the same, 4) Violation of the rights to legal guarantees, legal protection and personal integrity of the family members of Luis Ferreira da Cruz, 5) Continuous violation of the rights to legal guarantees and legal

7. *Written Response*. On September 14, 2015, the State presented to the Court its written response to the submission of the case, and to the pleadings and motions brief as well as to preliminary objections (hereinafter "response" or "written response"), according to the terms of Article 41 of Regulations of the Court.[5]

8. *Comments to Preliminary Objections*. In memos received on October 28 and 30, 2015, the representatives and the Commission presented their comments to the preliminary objections put forward by the State.

9. *Public Hearing*. In a Resolution put forth by the President of the Court on December 11, 2015,[6] and a Resolution of the Court dated February 15, 2016,[7] the Commission and parties involved called for a public hearing, which was held on February 18 and 19, 2016, during the 113th Ordinary Period of Sessions of the Court.[8] Presented at the hearing were the statements of two witnesses proposed by the representatives and four experts proposed by the Commission, the representatives and the State, along with comments and final oral arguments on behalf of the Commission, the representatives and the State, respectively. Additionally, in said resolutions it was ordered that statements be given before a notary public (affidavit) by seven witnesses and 10 experts proposed by the representatives and the State.

protection, covered in Articles 8 and 25 of the Convention, to the detriment of people found to be working at Brasil Verde Farm prior to1998.

5 In memos dated June 8 and 30 and August 10, 2015, the State appointed as its representatives Maria Dulce Silva Barros, Boni de Moraes Soares, Pedro Marcos de Castro Saldanha, João Guilherme Fernandes Maranhão, Rodrigo de Oliveira Morais, Luciana Peres, Fabiola de Nazaré Oliveira and Hélia Alves Girão.

6 Resolution of the President of the Court, December 11, 2015, available here: http://www.corteidh.or.cr/docs/asuntos/trabajadores_11_12_15.pdf

7 Resolution of the Court, February 15, 2016, available here: http://www.corteidh.or.cr/docs/asuntos/trabajadores_15_02_16_por.pdf

8 Appearing at the hearing were: a) for the Inter-American Commission: Commissioner Francisco Eguiguren and Assistant to the Executive Secretary Silvia Serrano Guzmán; b) for the representatives: Viviana Krsticevic; Helena de Souza Rocha; Beatriz Affonso; Elsa Meany; Xavier Plassat; Ricardo Rezende Figueira, and Ana Batista de Souza, and c) for the State: Maria Dulce Silva Barros; Boni de Moraes Soares; João Guilherme Fernandes Maranhão; Luciana Peres; Hélida Alves Girão; Giordano da Silva Rosseto; Maria Cristina M. dos Anjos; Gustavo Guimarães; Nilma Lino Gomes; Cecilia Bizerra Souza, and Claudio Fachel.

10. *Amicus curiae*. The Court received seven *amicus curiae* briefs,[9] presented by: 1) the Human Rights Clinic of Amazonia, Federal University of Pará;[10] 2) the Institute for Democracy and Human Rights of the Pontificia Catholic University of Perú;[11] 3) the International Trade Union Confederation;[12] 4) the University of Northern Colombia;[13] 5) the organization Human Rights in Practice;[14] 6) Tara Melish, Associate Professor at State University of New York, and 7) the Business and Human Rights Project of the University of Essex.[15]

11. *In Situ Proceedings*. Through a Resolution of the Acting President dated February 23, 2016,[16] in light of the controversial facts under litigation and taking into account the need to obtain specific evidence in order to resolve the dispute, it was agreed upon by the Court in full accordance and compliance with Articles 58(a) and 58(d) of the Rules, that in situ proceedings would take place in the Federal Republic of Brazil. On June 6 and 7, 2016, a Court delegation[17] carried out in situ proceedings with the goal of receiving statements from five alleged victims in the present case and receiving informational statements from five state officials responsible for combatting slavery in Brazil.

12. *Written Closing Arguments and Comments*. On June 28, 2016, the representatives and the State presented their respective written closing arguments and the Inter-American Commission submitted its final written observations.

[9] Regarding the *amici curiae* presented, the State objected that translations of the documents from the University of Northern Colombia, the Institute for Democracy and Human Rights of the Pontificia Catholic University of Peru and the organization Human Rights in Practice were not presented within the stipulated time frame and therefore it requested that they be declared inadmissible. It also argued that the *amicus curiae* from Tara Melish, associate professor of the State University of New York, made explicit reference to the written response from the State, even though said document was meant for the exclusive use of the parties and the Inter-American Court during the prosecution of the case, and for that reason should be declared inadmissible. The Court established that the translation to Portuguese of the documents from the University of Northern Colombia was presented on March 14, 2016, and that the translation of the documents from the Institute for Democracy and Human Rights of the Pontificia Catholic University of Peru, as well as from the organization Human Rights in Practice, were presented on March 17, 2016. Therefore, the Court will not take into consideration the documents presented as *amici curiae* briefs by the Institute for Democracy and Human Rights of the Pontificia Catholic University of Peru and the organization Human Rights in Practice, due to their untimely delivery. However, the documents from the University of Northern Colombia were presented within the timeframe granted by the Court. Regarding the State's objections to the documents presented by Tara Melish, the Court notes that it did not make public the State's written response in this case, nevertheless it affirms that this document does not have a confidential nature nor does it contain sensitive information that the State might have requested be kept confidential, and therefore it does not meet the standards for inadmissibility that the State adjures.

[10] The brief was signed by Valena Jacob Chaves Mesquita, Cristina Figueiredo Terezo Ribeiro, Manoel Maurício Ramos Neto, Caio César Dias Santos, Raysa Antonia Alves Alves and Tamires da Silva Lima.

[11] The brief was signed by Elizabeth Salmón Gárate, Cristina Blanco Vizarreta, Alessandra Enrico Headrington and Adrián Lengua Parra (evidence file, p. 1).

[12] The brief was signed by Sharan Burrow.

[13] The brief was signed by Cindy Hawkins Rada, Maira Kleber Sierra, Shirley Llain Arenilla, Andrea Alejandra and Ariza Lascarro.

[14] The brief was signed by Helen Duffy.

[15] The brief was signed by Sheldon Leader and Anil Yilmaz-Vastardis.

[16] Resolution regarding In Situ Proceedings dated February 23, 2016 is available here: http://www.corteidh.or.cr/docs/asuntos/trabajadores_23_02_16.pdf

[17] The Court delegation that carried out the in situ proceedings was comprised of Acting President Judge Eduardo Ferrer Mac-Gregor Poisot, Judge Eugenio Raul Zaffaroni and Judge Patricio Pazmiño Freire; Court Secretary Pablo Saavedra Alessandri, and Court Secretariat's Attorney Carlos E. Gaio.

13. *Comments from the Parties and the Commission*. The President granted a period for the parties and the Commission to present comments they considered pertinent regarding the annexes submitted by the State and the representatives along with their written closing arguments. On August 5 and 6, the State and the Commission, respectively, delivered the requested comments. The representatives did not submit comments during the timeframe set aside for them.

14. *Case Deliberation*. The Court began deliberation of the present Judgment on October 18, 2016.

III. JURISDICTION

15. The Inter-American Court has jurisdiction to deliberate the present case, according to Article 62(3) of the Convention, on the grounds of Brazil being a State Party to the American Convention since September 25, 1992, and having recognized the obligatory jurisdiction of the Court on December 10, 1998.

IV. PRELIMINARY OBJECTIONS

16. In its written argument, the State presented 10 preliminary objections regarding: **A**. Inadmissibility of submission of the case to the Court due to the publication of the Background Report by the Commission; **B**. Lack of jurisdiction *ratione personae* regarding alleged victims who are unidentified, the ones who are identified but were not granted power of representation, who did not appear in the Background Report by the Commission or who were not related to the facts of the case; **C**. Lack of jurisdiction *ratione personae* concerning abstract violations; **D**. Lack of jurisdiction *ratione temporis* concerning facts preceding the date of State recognition of Court jurisdiction; **E**. Lack of jurisdiction *ratione temporis* concerning facts preceding State adherence to the American Convention; **F**. Lack of jurisdiction *ratione materiae* due to violation of the principle of subsidiarity of the Inter-American system (wording of the 4th draft); **G**. Lack of jurisdiction *ratione materia*e relative to alleged violations of the prohibition on human trafficking; **H**. Lack of jurisdiction *ratione materiae* regarding supposed violations of labor rights; **I**. Lack of previous exhaustion of domestic legal remedies; and **J**. Statute of limitation before the Commission concerning intentions to make moral and material reparations.

17. Subsequently, in its written closing arguments, the State presented a new preliminary objection referring to the Court's supposed lack of jurisdiction regarding the audits carried out in 1999 and 2002. This preliminary objection will not be a subject of review due to its having been presented beyond the allotted timeframe.

18. In order to address the objections put forth by the State, the Court observes that it will only consider the preliminary objections whose arguments by their very nature and on the basis of their content and

purpose could be resolved in such a way that would impede the continuation of the proceedings or a pronouncement concerning the merits.[18] It has been a reiterated criteria of the Court that through a preliminary objection may be presented objections related to the admissibility of a case or jurisdiction over a certain case matter or part thereof, whether for reasons related to persons, subject, time or place.[19]

19. In the following, the Court will proceed to consider the aforementioned preliminary objections, in the order in which they were presented by the State.

A. Alleged Inadmissibility of the Case to the Court due to Publication of the Background Report by the Commission

A.1. State Arguments, Commission and Representatives' Comments

20. The **State** argued that the preliminary report released by the Commission cannot be published by the parties or by the Commission. Additionally it argued that the Commission's final report, as referenced in Article 50 of the American Convention, can only be published once the established amount of time has passed to allow for complying with recommended guidelines or by absolute majority vote of its members. The publication of this final report constitutes the "maximum sanction" that a State can suffer in terms of the proceedings before the Commission. The State claimed that the Commission had maintained on its website the complete text of the November 3, 2011 Admissibility and Background Report No. 169/2011 before submitting the present case before the Court, which implies the logical impossibility of bringing the case to the attention of the Court, given that the Convention authorizes the Commission to issue a final report and eventually publish it, or else submit it before the jurisdiction of the Court, possibilities that are mutually exclusive. The State considered the publication of the Commission Report to be in violation of Articles 50 and 51 of the Convention, and therefore requested the inadmissibility of the present case.

21. The **Commission** noted that the State's argument does not constitute a preliminary objection, because it does not refer to questions of jurisdiction, nor to the requirements of admissibility established by the Convention. Furthermore, it noted that the Report issued on the basis of Article 50 of the Convention constitutes a preliminary report of a confidential nature, which can lead to two actions: submit the case before the Court or proceed with its publication; but once one of the prior options has been chosen, the Report loses its original character. The Commission observed that in taking the matter to the Court, it published the final Report (Admissibility and Background) on its website, consistent with previous practice, an act which did not violate the Convention. Furthermore, the Commission observed that the State's citation, regarding the publication of the Admissibility and Background Report before submission of the case before the Court, is an electronic link available on September 10, 2015, which postdates

[18] *Cf. Cepeda Vargas v. Colombia*. Preliminary Objections, Background, Reparations and Costs, Judgment of May 26, 2010, C213, para. 35 and *Maldonado Ordoñez v. Guatemala*. Preliminary Objections, Background, Reparations and Costs, Judgment of May 3, 2016, C311, para. 20.
[19] *Cf. Las Palmeras v. Colombia.* Preliminary Objections, Judgment of February 4, 2000, C67, para. 34, and *Maldonado Ordoñez,* para. 20.

submission of the case. In conclusion, the Commission observed that the State did not present any evidentiary material regarding this allegedly wrongful publication.

22. The **representatives** observed that the State did not present any argument related to persons, subject, time or place that could have any effect on the jurisdiction of the Court, and therefore requested that the Court dismiss this objection. Furthermore, they indicated that the State intends to present procedural aspects before the Commission as part of their preliminary objections. In conclusion, the representatives alleged that the publication of the Background Report did not constitute a grave error nor is there any prohibition against its publication.

A.2. The Court's Findings

23. It is a sustained interpretation of this Tribunal that Articles 50 and 51 of the Convention allude to two distinct reports, the first one being a preliminary report and the second one a final one. Each one has its distinct characteristics, corresponding to distinct stages.[20]

24. The preliminary report corresponds to the first stage of the proceedings as described in Article 50 of the Convention, which allows the Commission, in case no decision is reached, to draft a report expounding upon the facts and their conclusions and convey it to the interested State. Due to the preliminary nature of this document, it is conveyed back to the State in a confidential capacity and it is sent with the intention that the State adopt the propositions and recommendations of the Commission and resolve the problems outlined therein. The preliminary and confidential nature of the document means that the State does not have the authority to publish it and therefore, in observance of the principles of equality and procedural equilibrium of the parties, it is reasonable to consider that the Commission also does not find itself in a material and legal position to publish the preliminary report.[21]

25. Once a period of three months has passed, if the State has not resolved the matter put forth in the preliminary report according to the propositions outlined therein, the Commission is authorized within said period to decide if it will submit the case before the Court or if it will publish the report in accordance with Article 51.[22]

26. To that effect, the Report provided for in Article 50 can be published, as long as it happens after the presentation of the case to the Court. This is because at that moment of the proceedings the State is already familiar with the contents of the Report and has had the opportunity to comply with its recommendations. Therefore, it cannot be considered a breach of the principle of procedural equilibrium between the parties. This has been a consistent practice of the Commission for many years, especially since the reform of its Rules in 2009.

[20] *Cf.* Certain responsibilities of the Inter-American Commission on Human Rights (Articles 41, 42, 44, 46, 47, 50 and 51 of the American Convention on Human Rights), Advisory Opinion 13/93, July 6, 1993, para. 53.
[21] *Cf.* Certain responsibilities of the Inter-American Commission on Human Rights, para. 48.
[22] *Cf.* Certain responsibilities of the Inter-American Commission on Human Rights, para. 50.

27. In the present case, the State affirmed that the Commission published the Admissibility and Background Report No. 169/2011 before submitting it to the Court. The Commission observed that it published it on its web page on September 10, 2015, after submitting the matter to the jurisdiction of the Court on March 12, 2015, evidence of which was presented. The State did not present a statement with respect to the publication of this case's Report having any other form than that set forth by the Commission or being in any way contrary to what is spelled out in the American Convention.

28. Based on the above, the Court considers the State's argument to be inadmissible.

B. Alleged Lack of Jurisdiction *Ratione Personae* Regarding Alleged Victims

29. The following will address first of all the State arguments regarding objections related to alleged victims who: i) were identified and represented; ii) had no proof of representation; iii) had no power of attorney; iv) had no relation to the facts of the case; v) had a different identity or lack of due representation by next of kin, and vi) were not mentioned in the Background Report. Secondly, the Court will review the comments of the Commission and those of the representatives. Finally, the corresponding analysis will be presented.

B.1. State Arguments

i) Alleged Victims who were Identified and Represented

30. The **State** alleged that the representatives only certified the powers of attorney of 33 alleged victims who were allegedly found at the Hacienda Brasil Verde in the year 2000.[23] It also stated that the Court must consider the facts of the case only in relation to the correctly represented alleged victims, and to those listed in the Admissibility and Background Report No. 169/11 who were duly identified and related to the events that occurred on the farm in question. The State also noted that the representatives did not mention in their brief the name of Francisco das Chagas Bastos Sousa, but they presented a power of attorney in his name; and that they did not present powers of attorney or equivalent documents for the alleged victims or for Luis Ferreira da Cruz's next of kin, allegedly a victim of forced disappearance.

ii) Alleged Victims with no Proof of Representation

31. The State argued that the representatives of the alleged victims must present powers of attorney signed by the alleged victim or his next of kin, which must clearly identify the party that is granting the

[23] 1. Alfredo Rodrigues; 2. Antônio Bento da Silva; 3. Antônio Damas Filho; 4. Antônio Fernandes Costa; 5. Antônio Francisco da Silva; 6. Antônio Ivaldo Rodrigues da Silva; 7. Carlito Bastos Gonçalves; 8. Carlos Ferreira Lopes; 9. Erimar Lima da Silva; 10. Firmino da Silva; 11. Francisco Mariano da Silva; 12. Francisco das Chagas Bastos Sousa; 13. Francisco das Chagas Cardoso Carvalho; 14. Francisco das Chagas Diogo; 15. Francisco de Assis Felix; 16. Francisco de Assis Pereira da Silva; 17. Francisco de Sousa Brígido; 18. Francisco Fabiano Leandro; 19. Francisco Ferreira da Silva; 20. Francisco Teodoro Diogo; 21. Gonçalo Constancio da Silva; 22. Gonçalo Firmino de Sousa; 23. José Cordeiro Ramos; 24. José Francisco Furtado de Sousa; 25. José Leandro da Silva; 26. Luiz Sicinato de Menezes; 27. Marcos Antônio Lima; 28. Pedro Fernandes da Silva; 29. Raimundo de Sousa Leandro; 30. Raimundo Nonato da Silva; 31. Roberto Alves Nascimento; 32. Rogerio Felix Silva, and 33. Vicentina Maria da Conceição.

power of representation. Furthermore, it was noted that even if the representatives complied with the formal requirements mandated by the Court in presenting these authorizations, problems persisted which complicated the identification of some names and some alleged victims who were allegedly represented.[24]

iii) Alleged Victims with no Power of Attorney

32. The State affirmed that the Court has waived the requirement of proof of formal representation of alleged victims in particular cases, but in the present matter this criteria is not applicable, given that the alleged victims were not killed or forcibly disappeared. Furthermore, no special characteristics can be established from the facts regarding the group of alleged victims which could justify waiving the presentation of evidence of the powers of attorney. Therefore it would not be reasonable to waive the requirement of an order of representation before the Court only because of there being a wide array of alleged victims, because the aforementioned would create legal uncertainty and would contrast with the careful and balanced rulings that the Court has rendered in previous cases.

iv) Alleged Victims who had no Relation to the Facts of the Case

33. The State alleged that the representatives presented powers of attorney of 12 alleged workers at the Hacienda Brasil Verde,[25] but there is no proof or indication that they had been employees of said farm, in spite of their names being on the Admissibility and Background Report and the report relative to the inspection carried out by the Special Mobile Inspection Group in March 2000.

v) Alleged Victims with a Different Identity or Lack of Due Representation by Family Members

34. The State noted that there were discrepancies and inconsistencies regarding the identity of represented victims, because the representatives presented incomplete or imprecise information and contradictory identification numbers. Furthermore, it required that the representatives produce death certificates of the presumed dead along with proof of kinship existing between the alleged next of kin and the presumed deceased victims.

vi) Alleged Victims not Mentioned in the Background Report

35. Finally, the State indicated that the Court does not have jurisdiction over the facts regarding the alleged victims Francisco das Chagas Bastos Souza, José Francisco Furtado de Sousa, Antônio Pereira dos Santos and Francisco Pereira da Silva, given that they were not mentioned in the Admissibility and

[24] 1. Firmino da Silva (allegedly deceased and represented by his alleged wife Maria da Silva Santos); 2. Gonçalo Constancio da Silva (allegedly deceased and represented by his alleged wife Lucilene Alves da Silva), and 3. José Cordeiro Ramos (allegedly deceased and represented by his alleged wife Elizete Mendes Lima).

[25] 1. Antônio Bento da Silva; 2. Antônio Francisco da Silva; 3. Carlos Ferreira Lopes; 4. Firmino da Silva; 5. Francisco das Chagas Bastos Souza; 6. Francisco das Chagas Cardoso Carvalho; 7. Francisco Fabiano Leandro; 8. Francisco Ferreira da Silva; 9. Francisco Mariano da Silva; 10. Gonçalo Firmino de Souza; 11. Raimundo Nonato da Silva, and 12. Vicentina Maria da Conceição.

Background Report No. 169/11. Furthermore, it stated that, in the case of José Francisco Furtado de Sousa, there is no reasonable way to assume that he is also Gonçalo Luiz Furtado, who was named as a victim in the Background Report.

36. The State requested that the Court exercise its jurisdiction only with respect to the 18 alleged victims "duly related to, represented and identified" in the Admissibility and Background Report No. 169/11.[26]

B.2. Commission Comments

37. The Commission observed that the State's arguments must be considered inadmissible, since they relate to an aspect of the study of the background of the case. It added that Article 35(2) of the Rules of the Court is applicable in the present case, given that the persons not included in the Admissibility and Background Report cannot remain excluded from the decision of this Tribunal. The Commission stated that the Court must maintain a degree of flexibility, or else order the practice of some diligence to support the evidence that it considers pertinent in order to identify the largest number of victims, considering that the lack of comprehensive information about them conforms to the nature of the case and to the omissions of the State during the respective inspections to provide documentation and information.

38. Furthermore, the Commission observed that the lack of a power of attorney cannot constitute sufficient reason for a person not to be identified and declared a victim in an individual case, therefore it is up to the Court to determine if the alleged victims that did not grant this power are reasonably represented by the current representatives, including during previous steps in the process, and given that the representatives of the alleged victims have not deliberately or expressly excluded anyone with respect to those who lack power of attorney.

39. In conclusion, the Commission indicated that the State's arguments do not constitute a preliminary objection, because identification of the victims should be carried out within the context of the case, according to terms set forth in Article 35(2) of Rules of the Court, as well as through the adoption of necessary measures to guarantee the representation of all possible alleged victims in the Inter-American process.

B.3. Representatives' Comments

40. The representatives alleged that, given the complexity of the case, the collective and massive nature of the violations, along with other contextual factors, it is reasonable to enforce the provisions set forth in Article 35(2) of Rules of the Court, and therefore a collective identification must be made of all the

[26] These people would be 1. Alfredo Rodrigues; 2. Antônio Damas Filho; 3. Antônio Fernandes Costa; 4. Antônio Ivaldo Rodrigues da Silva; 5. Carlito Bastos Gonçalves; 6. Erimar Lima da Silva; 7. Francisco das Chagas Diogo; 8. Francisco de Assis Felix; 9. Francisco de Assis Pereira da Silva; 10. Francisco de Sousa Brígido; 11. Francisco Teodoro Diogo; 12. José Leandro da Silva; 13. Luiz Sicinato de Menezes; 14. Marcos Antônio Lima; 15. Pedro Fernandes da Silva; 16. Raimundo de Sousa Leandro; 17. Roberto Alves Nascimento, and 18. Rogerio Felix Silva.

alleged victims found in the 1993, 1996, 1997 and 2000 inspections carried out at the Hacienda Brasil Verde.

41. Furthermore, they stated that they succeeded in identifying 49 people from the 1993 inspection; 78 from the 1996 inspection, 93 from the 1997 visit and 85 from the 2000 inspection. They indicated that to the extent possible, and despite existing difficulties, they made an effort to identify by first and last names at a minimum all the individuals for whom they had access to documents, without losing sight of the fact that 20 years had passed since the first inspection, which made contact with them difficult. They also observed that the 2000 inspection verified that the majority of the alleged victims were illiterate, came from rural areas, few had official identification and they were constantly on the move in search of economic subsistence.

42. The representatives also noted that it is not a requirement of the American Convention, the Rules of the Commission or of the Court for the alleged victims to have formal legal representation in the Inter-American process. Therefore, few formalities exist to access the mechanisms of protection. Furthermore, they observed that the alleged victims may opt for legal representation, but it is not an obligation to have it, and neither is it necessary to have representation with specific powers of attorney, as the jurisdiction of the Court has already established.

43. Moreover, they alleged that the remote location of the Hacienda Brasil Verde must be taken into consideration, together with the difficulties of access to it, as well as the situation of exclusion, vulnerability, illiteracy and mobility of the alleged victims, and that these victims never manifested against their representation in the international process. Finally, they called attention to the jurisprudence of the Court regarding the fact that the list of victims may vary during the process in certain circumstances.

B.4. The Court's Findings

44. The Court notes that the State raised a number of preliminary objections against the list of 33 alleged victims named in the Admissibility and Background Report and asserted that only 18 alleged victims were duly represented, identified and mentioned in said report.

45. On the other hand, the Court observes that the victims must be named in the case brief and in the Commission Report. However, taking into account the omission of these names, on some occasions and due to the particularities of each case, the Court has considered as alleged victims individuals who were not listed as such in the pleas, provided the right to defense has been respected on the part of all parties

and the alleged victims maintain a connection to the events described in the Background Report and with the evidence put before the Court,[27] also taking into the account the magnitude of the violation.[28]

46. Regarding the identification of alleged victims, the Court observes that Article 35(2) of its Rules establishes that when it is proven that it was not possible to identify some alleged victims of the facts of the case, in cases of massive or collective violations, the Court will on occasion decide if it considers them to be victims in accordance with the nature of the violation[29].

47. In this way, the Court has evaluated the application of Article 35(2) of the Rules, based on the particular characteristics of each case,[30] and it has applied Article 35(2) in massive or collective cases that present difficulties of identifying or contacting all alleged victims, for example, due to the presence of an armed conflict,[31] displacement,[32] burning of the bodies of the alleged victims,[33] or in cases where entire families have been disappeared, so there would be no one that could speak on their behalf.[34] It has also taken into account the difficulty of access to the area where the events occurred,[35] the lack of record keeping regarding the inhabitants of the place[36] and the passage of time,[37] along with characteristics particular to the alleged victims in the instance, for example, of having formed family groups with similar first and last names,[38] or involving migrants.[39] It has also considered the conduct of the State, for

[27] *Cf. Masacre Plan de Sánchez v. Guatemala.* Background, Judgment of April 29, 2004, C105, para. 48, and *Case of the Ituango Masacres v. Colombia.* Judgment of July 1, 2006, C148, para. 91.
[28] *Cf. Masacres de El Mozote y lugares aledaños v. El Salvador*. Background, Reparations and Costs, October 25, 2012, C252, para. 51.
[29] *Cf. Masacres de Rio Negro v. Guatemala*. Preliminary Objections, Background, Reparations and Costs, Judgment of September 4, 2012, C250, para. 48, and *Masacres de El Mozote y lugares aledaños*, para. 50.
[30] It is worth noting that the Court has applied Article 35(2) of the Rules in the following cases: *Masacres de Río Negro v. Guatemala*; *Nadege Dorzema et al. v. the Dominican Republic*. Background, Reparations and Costs, Judgment of October 24, 2012, C251; *Masacres de El Mozote y lugares aledaños v. El Salvador*; *Comunidades Afrodescendientes Desplazadas de la Cuenca del Río Cacarica (Operación Génesis) v. Colombia*. Preliminary Objections, Background, Reparations and Costs, Judgment of November 20, 2013, C270, and *Comunidad Campesina de Santa Bárbara v. Perú*. Preliminary Objections, Background, Reparations and Costs, Judgment of September 1, 2015, C299. Likewise, it has rejected its application in the following cases: *Barbani Duarteet al. v. Uruguay*. Background, Reparations and Costs, Judgment of October 13, 2011. C234; *Defensor de Derechos Humanos et al. v. Guatemala*. Preliminary Objections, Background, Reparations and Costs, Judgment of August 28, 2014, C283; *García y Familiares v. Guatemala*. Background, Reparations and Costs, Judgment of November 29, 2012, C258; *Suárez Peralta v. Ecuador*. Preliminary Objections, Background, Reparations and Costs. Judgment of May 21, 2013, C261; *J. v. Perú*. Preliminary Objection, Background, Reparations and Costs, Judgment of November 27, 2013, C275; *Rochac Hernández et al. v. El Salvador*. Background, Reparations and Costs, Judgment of October 14, 2014, C285, and *Argüelles et al. v. Argentina*. Preliminary Objections, Background, Reparations and Costs, Judgment of November 20, 2014, C288.
[31] *Cf. Masacres de Río Negro*, para. 48, and *Comunidades Afrodescendientes Desplazadas de la Cuenca del Río Cacarica (Operación Génesis)*, para. 41.
[32] *Cf. Nadege Dorzema et al.*, para. 30, and *Comunidades Afrodescendientes Desplazadas de la Cuenca del Río Cacarica (Operación Génesis)*, para. 41.
[33] *Cf. Masacres de El Mozote y lugares aledaños*, para. 30.
[34] *Cf. Masacres de Río Negro*, para. 48.
[35] *Cf. Comunidades Afrodescendientes Desplazadas de la Cuenca del Río Cacarica (Operación Génesis)*, para. 41.
[36] *Cf. Masacres de El Mozote y lugares aledaños*, para. 30, and *Masacres de Río Negro*, para. 48.
[37] *Cf. Masacres de Río Negro*, para. 51, and *Comunidades Afrodescendientes Desplazadas de la Cuenca del Río Cacarica (Operación Génesis)*, para. 41.
[38] *Cf. Masacres de Río Negro*, para. 48.
[39] *Cf. Nadege Dorzema et al.*, para. 30.

example, when arguments exist that the lack of investigation contributed to the incomplete identification of the alleged victims.[40]

48. The Court notes that the Commission indicated in its Background Report that it did not have information concerning the identity of all the victims. With that in mind, the Court considers that the problems laid out with respect to the identification of the alleged victims in cases of collective violations, according to the content of Article 35(2) of the Rules, are understandable in the present case, due to: i) the context of the case; ii) the 20 years that have passed; iii) the challenge of contacting alleged victims given their circumstances of exclusion and vulnerability and iv) some acts of record keeping omissions attributable to the State.

49. The Court considers that the specific characteristics of the present matter allow it to conclude that reasonable causes exist to justify the fact that the list of alleged victims included in the Commission's Admissibility and Background Report may contain inconsistencies both in the complete identification of the alleged victims and in their representation. Therefore, the Court decides to apply Article 35(2) of its Rules and in the background study it will determine appropriate measures to take regarding identification of the alleged victims in this case. Consequently, the Court dismisses the preliminary objections put forward by the State in relation to the identification and representation of the alleged victims, along with the lack of relationship of some of the alleged victims to the case as presented in the Background Report presented by the Commission.

50. Furthermore, the Court considers, without prejudice to the analysis that it will undertake later with respect to the determination of alleged victims (*infra* para. 189), that the study of evidence and facts relative to the verification of the employment relationship of the alleged victims to the aforementioned farm corresponds to an analysis of the background of the present case, and for this reason it rejects the preliminary objection related to the supposed lack of relationship of some alleged victims to the facts of the case.

C. Alleged Lack of Jurisdiction *Ratione Personae* Concerning Abstract Violations

C.1. State Arguments, Commission's and Representatives' Observations

51. The **State** has indicated that it is imperative that a legislative act questioned in a contentious case interfere with the liberty of at least one specific individual, otherwise the Court is not competent to evaluate the compatibility of this act with the Convention. In this particular case, it noted that the Court does not have the jurisdiction to hear the petition of the representatives that legislative measures be adopted to avoid regression in the efforts to combat slave labor in Brazil. Said petition depends on the existence of proposed laws that seek to reform Article 149 of the Criminal Code, and no such laws have been enacted.

[40] *Cf. Masacres de Río Negro*, para. 48, and *Masacres de El Mozote y lugares aledaños*, para. 50.

52. The **Commission** observed that the representatives informed the Court concerning the legislative measures that are currently being adopted not in relation to the real victims of this case, but rather in order to contextualize the current relevance of this matter and inform the Court of all its necessary elements so that the possible non-repetitive measures that may be ordered can be in accordance with and pertinent to the current situation that exists involving slave labor, inclusive of the regulatory framework.

53. The **representatives** expressed that they requested "as a measure of reparation" that the Court order the State to abstain from taking legislative steps that represent a regression in the efforts to combat slave labor in Brazil, since proposed laws now exist that would limit the reach of Article 149 of the Criminal Code regarding analogous forms of slavery.

C.2. The Court's Findings

54. The Court confirms that the State's argument refers to a means of reparations requested by the representatives, in the sense that the Court orders the State to abstain from taking legislative measures that could represent a setback in the efforts to combat slave labor in Brazil. The Court observes that in order for a reparation to be made, there must be a verification of the causal link between the facts of the case, the declared violations, the proven harms and the requested means.[41] Accordingly, this Tribunal considers it impossible to analyze the objection raised by the State, because the contention raised is not capable to being resolved in a preliminary way, but rather depends directly on the background of the case.[42] Therefore, the Court dismisses the preliminary objection.

D. Alleged Lack of Jurisdiction *Ratione Temporis* Regarding Facts Preceding the Date of the Recognition of the Jurisdiction of the Court, and Alleged Lack of Jurisdiction *Ratione Temporis* Concerning Facts Preceding State Adherence to the Convention

55. The Court will consider together the two preliminary objections of the State regarding time limitation (ratione temporis), since they refer to related hypotheses and entail identical arguments on the part of the State, as well as of the Commission and the representatives.

D.1. State Arguments, Commission's and Representatives' Observations

56. The **State** has indicated that it formalized its adherence to the American Convention on November 6, 1992, and recognized the jurisdiction of the Court on December 10, 1998, for subsequent events. The State maintained that the interpretation of the Commission and of the representatives in relation to events preceding Brazil's recognition of the Court's jurisdiction violates the special rules declaring limitation of the scope of jurisdiction according to Article 62(2) of the Convention, by not recognizing the sovereignty

41 *Cf. Ticona Estrada et al. v. Bolivia*. Background, Reparations and Costs, Judgment of November 27, 2008, C191, para. 110, and *López Lone et al. v. Honduras*. Preliminary Objections, Background, Reparations and Costs, Judgment of October 5, 2015, C302, para. 288.

42 *Cf. Velásquez Rodríguez v. Honduras*. Preliminary Objections, Judgment of June 26, 1987, C1, para. 96, and *Quispialaya Vilcapoma v. Perú.* Preliminary Objections, Background, Reparations and Costs, Judgment of November 23, 2015, C308, paras. 30 and 32.

of the State and trying to extend the jurisdiction of the Court beyond the limits declared in said Article. The State considers that the proposed interpretation would balance the effects of all the declarations of acceptance of the Court's jurisdiction, be they with or without time limitations, which does not recognize the will of the States and the limits legitimately imposed by them in submitting themselves to the jurisdiction of the Court, except when the acts were continuous, which does not apply to the present case.

57. According to the State, the Court has jurisdiction *rationae temporis* only over considering possible violations related to facts identified in the inspection from the year 2000, because they are the only ones subsequent to December 10, 1998. Similarly, it alleged that, concerning possible violations of the rights to protection and judicial guarantees, the Court would only have jurisdiction regarding criminal processes begun after that date and which constituted eventual specific and autonomous violations of the denial of justice.

58. Additionally, the State alleged that the Court must declare itself without jurisdiction to consider supposed violations that have occurred before September 25, 1992, the day in which it joined the American Convention, that is, acts that presumably were in violation of the Convention occurring from December 21, 1988 to March 18, 1992.

59. The **Commission** noted that in sending the case to Court it specified that it would only inform about events that occurred or continued to occur after December 10, 1998, the date Brazil accepted jurisdiction of the Court. They would consist of acts and omissions regarding the situation of forced labor, debt bondage and practices similar to slavery that, according to the Background Report, were confirmed through the audit that took place in the year 2000; as well as the acts and omissions that were carried out with impunity to all the facts, a situation which prevailed at the moment of the acceptance of the Court's jurisdiction and continued thereafter, including the disappearance of Iron Canuto da Silva and Luis Ferreira da Cruz.

60. The **representatives** indicated that the State makes an erroneous interpretation of the Court's jurisprudence and ignores its previous rulings in contentious cases against Brazil, because the Court has already established that, in determining if it has jurisdiction to examine a case or one of its aspects, it must consider the date of the State's recognition of its jurisdiction, as well as the terms in which it was given. Furthermore, the representatives allege that the Court has noted that it has the jurisdiction to consider violative acts that, having been initiated prior to the date of recognition of the Court's jurisdiction, have continued on or remained past that date.

61. The representatives also alleged that the forced disappearance of Luis Ferreira da Cruz, having occurred in August of 1988, continued after December 10, 1998, and has carried on until the present, and that the State continues to incur international responsibility for its omission of the duty to guarantee rights and for taking no effective action to find the alleged victim.

62. Additionally, the representatives alleged violations derived from the lack of investigation of slave labor and forced disappearances on the Hacienda Brasil Verde before 1988. They indicated that the State is responsible for the lack of investigation regarding the accusations of slave labor and forced disappearances made in 1988 and reiterated in 1992, and regarding as well the inspections from 1989, 1993 and 1996, which showed evidence of the existence of slave labor on the farm.

D.2. The Court's Findings

63. Brazil recognized the contentious jurisdiction of the Inter-American Court on December 10, 1998, and in its declaration indicated that the Tribunal would have jurisdiction regarding "facts subsequent" to said recognition.[43] Based on the aforementioned and on the principle of non-retroactivity, the Court cannot exercise its contentious jurisdiction to apply the Convention and declare a violation of its norms when the facts alleged or conduct of the State that could imply its international responsibility occur before said recognition of its jurisdiction.[44] For those reasons, facts that occurred before Brazil recognized the contentious jurisdiction of the Court remain outside its jurisdiction.

64. On the other hand, this Tribunal has consistently established in its jurisprudence that acts of a continuous or permanent nature extend throughout the entire time the fact persists, maintaining their lack of conformity to international obligations. In accordance with the foregoing, the Court observes that the continuous or permanent nature of the forced disappearance of persons has been recognized time and again by International Human Rights Law, in which the act of disappearance and its execution initiate the loss of personal liberty and the subsequent lack of information concerning one's future, and so it remains as long as the person's whereabouts continue to be unknown and the facts of the case have not been clarified.[45] Therefore, the Court has the jurisdiction to consider the alleged forced disappearance of Luis Ferreira da Cruz and Iron Canuto da Silva dating from Brazil's recognition of its contentious jurisdiction.

65. Additionally, the Tribunal can examine and rule on further alleged violations based on facts that occurred on or after December 10, 1998. Based on the above, the Court has jurisdiction to consider the alleged facts and omissions of the State that took place in the investigations and proceedings related to the inspection made at the Hacienda Brasil Verde in 1997, that occurred after Brazil's recognition of the contentious jurisdiction of the Tribunal, together with the facts related to the inspection made in the year 2000 and the proceedings initiated after it. Based on the above, this Tribunal reaffirms its continuous jurisprudence over this matter and finds the preliminary objection partially founded.

[43] Brazil's recognition of jurisdiction on December 10, 1998 signals that "[the] Government of the Federal Republic of Brazil declares that it recognizes, for an undetermined time, as obligatory and with full legal rights, the jurisdiction of the Inter-American Court of Human Rights, in all cases related to the interpretation or application of the American Convention on Human Rights, in accordance with Article 62 of the same, subject to reciprocity and for facts subsequent to this Declaration." Cf. General Information on the Treaty: American Convention on Human Rights. Brazil, recognition of jurisdiction. Available here: http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights_sign.htm last access [translator] 22 July 2019.
[44] *Cf. Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil*. Preliminary Objections, Background, Reparations and Costs, Judgment of November 24, 2010, C219, para. 16.
[45] *Cf. Gomes Lund et al. ("Guerrilha do Araguaia")*, para. 17.

E. Alleged lack of jurisdiction *ratione materiae* due to violation of the principle of subsidiarity of the Inter-American system

E.1. State Arguments, Commission's and Representatives' Observations

66. The **State** showed that internal judicial appeals were duly completed by competent authorities and that the representatives' disagreements concerning the conclusions those authorities reached are not sufficient to justify resorting to the Inter-American system. Furthermore, the State indicated that only in the hypothetical situation of an exhaustion of domestic legal remedies not leading to a conclusive judgment on the part of the competent authorities concerning the existence or not of an alleged violation can there be justification for resorting to the Inter-American system. It noted that in assuming jurisdiction, the Court would be standing in for national authorities and acting as a sort of "national fourth instance appeal court." What's more, it contends that various appeals were made at different moments and duly prosecuted to investigate supposed violations of human rights against laborers at the Hacienda Brasil Verde, and that all of them were heard and decided upon by the competent authorities.

67. Finally, the State noted that there was adequate functioning of the domestic courts regarding reparations for material damages suffered by the laborers at the Hacienda Brasil Verde, and it clarified that the Court does not have jurisdiction to rule on requests for reparation for material damages.

68. The **Commission** noted that it was up to the Court to consider on the merits if the domestic proceedings constituted suitable and effective means to reach the level of judicial protection in the presence of the rights that were violated, therefore the State allegation could not be resolved as a preliminary objection.

69. The **representatives** noted that in order for the fourth instance preliminary objection to operate, the victims' representatives must request that the Court review the domestic sentences only with respect to incorrect evaluation of the evidence, the facts or internal law. They affirmed that they have not requested of the Court the review of domestic decisions submitted by State tribunals, but that they question the failures of different state actors that resulted in violations of the duty to effective legal protection and judicial guarantees, lack of ideal and effective means to prevent the violation of the victims' human rights, as well as the absence of assistance commensurate with these violations, all of which amount to specific breaches of the Convention.

70. Finally, the representatives noted that the Court must consider in the present case if, effectively, there were violations of judicial protection and guarantees to due process, including an assessment of the causes that led to delays in the investigation and the eventual update of the statute of limitations, analysis of which corresponds to the background study.

E.2. The Court's Findings

71. The Tribunal has established that international jurisdiction has an auxiliary and complementary nature,[46] which is why it does not perform the functions of a court of "fourth instance," nor is it an appellate court or a court for hearing disagreements between parties concerning the scope of the burden of proof or the application of domestic law in aspects not directly related to the fulfillment of international human rights obligations.[47]

72. The Court observes that independently of the State defining a proposal as a "preliminary objection," if in analyzing such a proposal it becomes necessary to begin to consider in advance the background of the case, it would lose its preliminary nature and could not be examined as such.[48]

73. This Court has established that in order for a fourth instance objection to be applicable, "it is necessary for the claimant to ask the Court to review the verdict of a domestic court and consider its incorrect interpretation of evidence, facts or domestic law without also alleging at the same time that such a verdict resulted in the violation of international treaties over which the Tribunal has jurisdiction." Furthermore, this Tribunal has established that, in the assessment of compliance with certain international obligations, an intrinsic interrelation can arise between the analysis of international and domestic law. Therefore, determining whether the actions of judicial bodies constitute a violation of international obligations on the part of the State can compel the Court to examine their respective domestic processes to establish their compatibility with the American Convention.[49]

74. In the present case neither the Commission nor the representatives have requested a review of the domestic decisions related to the evaluation of evidence, facts, or the application of domestic law. The Court considers that the point of the background study is to consider, in accordance with the American Convention and international law, state arguments with respect to whether the domestic judicial processes were appropriate and efficient, and if the appeals were carried out and resolved properly. Likewise, it must consider in the background if the payment made for reparations of material damages was sufficient and if there were acts and omissions that violated guarantees of access to justice that could have engendered the State's international responsibility. Due to the foregoing, the Court dismisses this preliminary objection.

F. Alleged Lack of Jurisdiction *Ratione Materiae* Concerning Alleged Violations of the Prohibition on Human Trafficking

[46] The Preamble to the American Convention argues that international protection is "a convention reinforcing or complementing the protection provided by the domestic law of the American states". See also, The Effect of Reservations about Entry into Enforcement of the American Convention on Human Rights (arts. 74 and 75). Advisory Opinion 2/82 of September 24, 1982, A2, para 31; "Laws" in Article 30 of the American Convention on Human Rights, Advisory Opinion 6/86, May 9, 1986, A6, para. 26; *Velásquez Rodríguez v. Honduras*. Background, Judgment of July 29, 1988, C4, para. 61, and *García Ibarra et al. v. Ecuador*. Preliminary Objections, Background, Reparations and Costs, Judgment of November 17, 2015, para.17.
[47] *Cf. Cabrera García and Montiel Flores v. México.* Preliminary Objections, Background, Reparations and Costs, Judgment of November 26, 2010, C220, para. 16, and *García Ibarra et al.*, para. 17.
[48] *Cf. Castañeda Gutman v. México*. Preliminary Objections, Background, Reparations and Costs, Judgment of August 6, 2008, C184, para. 39, and *García Ibarra et al.*, para. 17.
[49] *"Niños de la Calle" (Villagrán Morales et al) v. Guatemala*. Background. Judgment of November 19, 1999, C63, para. 222, and *García Ibarra et al.*, paras. 19 and 20.

F.1. State arguments, Commission's and Representatives' Observations

75. The **State** argued that neither the Commission nor the Court have jurisdiction to prosecute individual petitions that claim the alleged violation of Brazil's international obligations to prohibit human trafficking, given that the jurisdiction of the Court is limited to the examination of alleged violations of the prohibition of slave trade and traffic in women, as established in Article 6 of the American Convention, infraction of which has not been alleged by the Commission or by the representatives in the present matter. Therefore, the State considered that the Court does not have the jurisdiction to consider in the background the alleged violation of the country's international obligations with respect to the prevention and combat of human trafficking.

76. The **Commission** clarified that it agrees with the State regarding the Court's contentious jurisdiction being limited to the Convention and instruments within the Inter-American scope, but it noted that this does not imply the impossibility of characterizing a specific violation of human rights according to its definitions in other international instruments, provided that such a situation violates the Convention or other applicable Inter-American instruments, as occurs, for example, in cases of genocide, rape, conscription of children, among others, including a human trafficking situation that necessarily implies violations of rights provided for in the Convention.

77. The **representatives** noted that it was repeatedly found that the Court, regarding examination of the compatibility of state behaviors and guidelines with the Convention, can interpret the obligations and rights found in said instrument in light of other treaties. Furthermore, they indicated that they allege specific violations due to the State's omission of the duty to guarantee with respect to slavery, involuntary servitude and human trafficking (Article 6 of the Convention), in relation to the rights of legal personality, personal integrity, personal liberty, privacy, honor and dignity, freedom of movement and residence, detrimental to the victims found at the Hacienda Brasil Verde after December 1998.

F.2. The Court's Findings

78. It is important to observe, in the present case, that neither the Commission nor the representatives have requested of the Court that the State be declared responsible for possible violations of Brazil's international obligations in relation to international treaties.

79. In accordance with Article 29(b) of the American Convention and the general rules of interpretation of treaties contained in the Vienna Convention on the Law of Treaties, the American Convention can be interpreted in relation to other international instruments.[50] Therefore, in examining the compatibility of state behaviors or guidelines with the Convention, the Court can interpret, in light of other treaties, the

[50] *Cf.* Comunidad *Mayagna (Sumo) Awas Tingni v. Nicaragua*. Background, Reparations and Costs, Judgment of August 31, 2001, C79, para. 148, and *Rodríguez Vera et al. (Desaparecidos del Palacio de Justicia) v. Colombia*. Preliminary Objections, Background, Reparations and Costs, Judgment of November 14, 2014, C287, para. 39. Also, Article 31(3)(c) of the referenced Vienna Convention establishes as a rule of interpretation that "within the context, one must take into account: [...] c) every pertinent form of international law applicable in the relationships between the parties".

obligations and rights contained in said instrument. This implies that the Court can observe the regulations of concrete international norms relative to the prohibition of slavery, involuntary servitude and human trafficking in order to give specific implementation of the conventional standard in defining the reach of state obligations.[51] Therefore, the lack of jurisdiction allegation formulated by the State has no substance, and their interpretation of the reach of Article 6 of the Convention does not meet the standard of a preliminary objection, but rather corresponds to the study of the background of the case.

80. Due to all of the above, the Court dismisses this preliminary objection.

G. Alleged Lack of Jurisdiction *Ratione Materiae* Regarding Supposed Violations of Labor Laws

G.1. State Arguments, Commission's and Representatives' Observations

81. The **State** alleged that: i) the Additional Protocol of the American Convention in the matter of Economic, Social and Cultural Rights (Protocol of San Salvador) notes clearly that only the rights of trade and educational unions can be subject to the system of individual petitions regulated by the Convention, and ii) facts verified at the Hacienda Brasil Verde allude to situations of violations of the right to just, equal and satisfactory work conditions, which would be regulated by Article 7 of the Protocol of San Salvador, and not by Article 6 of the American Convention. Therefore, the State indicated that, given that the facts of this case do not deal with aspects of trade or educational unions, the Court does not have the jurisdiction to consider them.

82. The **Commission** noted that the State's arguments are based in the fact that there has been no violation of Article 6 of the Convention, the subject of which is a matter of background. Furthermore, it observed that the Court on various occasions has established a connection between certain economic, social and cultural rights, as well as rights traditionally known as civil and political ones.

83. The **representatives** indicated that the State has recognized that in certain circumstances the Court has considered matters related to economic, social and cultural rights in order to better analyze violations of Articles 4, 5 and 19 of the Convention. Likewise, they have requested that this preliminary objection be rejected, given that there has been no claim of a specific violation of the Protocol of San Salvador.

G.2. The Court's Findings

84. The Court observes that the possible violation of the provisions of the Protocol of San Salvador is not an object of this litigation. Therefore, whether or not Article 6 of the Convention was violated relates to the background, and is not a matter for preliminary objections. For that reason, the Court dismisses this preliminary objection.

[51] *Cf. Masacre de Santo Domingo v. Colombia*. Preliminary Objections, Background and Reparations, Judgment of November 30, 2012, C259, para. 24, and *Rodríguez Vera*, para. 39.

H. Alleged Lack of Previous Exhaustion of Domestic Legal Remedies

H.1. State Arguments, Commission's and Representatives' Observations

85. The **State** noted that the opportunity must be granted to pursue all domestic legal remedies that result in recognizing and repairing harms caused to the victims, so that the alleged victim or his representative cannot directly seek international legal protection without having previously gone through domestic legal channels. Moreover, the State cited the existence of domestic appeals adequate to the protection of all rights allegedly infringed upon and for obtaining all reparations derived from said violations; and it noted that the representatives could, and even can, take advantage of this domestic legal process, which to date has not happened.

86. The State also requested the inadmissibility of the case with regard to the petitions for reparations for material and moral damages.

87. The **Commission** argued that the requirement of exhaustion of domestic legal remedies provided for in Article 46(1) of the Convention is related to the alleged facts that violate human rights. The representatives' claims concerning compensations ordered by the Court originate in the declaration of responsibility of the State in question, which constitutes an automatic consequence of such responsibility. The Convention did not predict which additional mechanisms must be exhausted in order for the victims to obtain compensation. The Commission noted that an obligation to exhaust all legal remedies as the State proposed would not only place a disproportionate burden on the victims, but it would also contradict what is foreseen in the Convention and defeat its purpose, as regards the requirement for exhausting domestic legal remedies as well as the institution of compensation. Furthermore, it indicated that the State's plea is extemporaneous, given that consideration of the exhaustion of domestic legal remedies corresponds to the stage of case admissibility before the Commission.

88. The **representatives** noted that the Court has continuously held that the opportune procedural moment for the State to present a preliminary objection due to the lack of exhaustion of domestic legal remedies is the admissibility phase of proceedings before the Commission, before any considerations regarding background. They also indicated that the Court has been consistent regarding the Commission having autonomy and independence in the exercise of their conventional mandate in considering the petitions submitted before them; and for its part, the Court has the role of effectuating legal control over the Commission's actions, which does not necessarily imply a revision of procedure, except in the instance of a grave error that infringes upon the right to defense of all parties. The representatives pointed out that the State, in presenting its written response to the Court, did not indicate the existence of a grave error or the failure to comply with any procedural requirement that might infringe upon the State's right to defense, but rather limited itself to showing its disagreement concerning the Commission's actions, which leads to the conclusion that it did not present this objection in a proper manner, given that such consideration occurs in the moment in which the Commission determines the admissibility of the case.

H.2. The Court's Findings

89. The Court has developed clear guidelines for considering an objection based on an alleged breach of the requirement for an exhaustion of domestic legal remedies. First, the Court has interpreted the objection to be a defense available to the State and as such can waive it either overtly or tacitly. Secondly, this objection must be presented at the opportune time so that the State can exercise its right to defense. Thirdly, the Court has affirmed that the State presenting this objection must specify the domestic legal remedies that have not yet been exhausted and demonstrate that these remedies are applicable and effective.[52]

90. The Court has noted that Article 46(1)(a) of the Convention provides that, in order to determine the admissibility of a petition or communication presented before the Commission, in accordance with Articles 44 or 45 of the Convention, it is necessary for all domestic legal remedies to have been employed and exhausted, according to the generally recognized principles of International Law.[53]

91. Therefore, during the admissibility phase of the case before the Commission the State must clearly explain the legal remedies that, according to their criteria, have not yet been exhausted, faced with the necessity or safeguarding the principle of procedural balance between the parties that must govern the entire proceedings before the Inter-American system.[54] As the Court has established time and again, it is not the task of this Tribunal, nor of the Commission, to identify ex officio which domestic legal remedies have not been exhausted, because it is not the role of international bodies to compensate for the lack of accuracy in the State's pleas arguments.[55] Likewise, the arguments that give credence to the preliminary objection put forward by the State before the Commission during the admissibility phase must correspond to the ones argued before the Court.[56]

92. Regardless of the reasons for a preliminary objection due to a lack of exhaustion in domestic legal remedies alleged by the State before the Court, the Court agrees with the Commission's statement, and observes that in the moment it responded to the petition before the Commission, the only mention the State made of an exhaustion of domestic legal remedies was that "the delay in criminal action is justified by the complexity and modification of the jurisprudence in order to become familiar with the processes linked to being subjugated to conditions similar to slavery"; without having subsequently presented more arguments in that regard.

93. The Court considers the documentation presented by the State to the Commission not sufficient to meet the requirements of a preliminary objection due to lack of exhaustion of domestic legal remedies

52 *Cf. Velásquez Rodríguez v. Honduras*. Preliminary Objections, para. 88, and *Herrera Espinoza et al. v. Ecuador*. Preliminary Objections, Background, Reparations and Costs, Judgment of September 1, 2016, C316, paras. 25 and 26.
53 *Cf. Velásquez Rodríguez v. Honduras*. Preliminary Objections, para. 85, and *Herrera Espinoza et al*, para. 24.
54 *Cf. Gonzales Lluy et al. v. Ecuador*. Preliminary Objections, Background, Reparations and Costs, Judgment of September 1, 2015, C298, para. 28, and *Chinchilla Sandoval v. Guatemala*. Preliminary Exception, Background, Reparations and Costs, Judgment of February 29, 2016, C312, para. 21.
55 *Cf. Reverón Trujillo v. Venezuela*. Preliminary Objection, Background, Reparations and Costs, Judgment of June 30, 2009, C197, para. 23, and *Tenorio Roca et al. v. Perú*. Preliminary Objections, Background, Reparations and Costs, Judgment of June 22, 2016, C314, para. 21.
56 *Cf. Furlan y familiares v. Argentina*. Preliminary Objections, Background, Reparations and Costs, Judgment of August 31, 2012, C246, para. 29, and *Herrera Espinoza et al*., para. 28.

(*supra*, para. 89). This is because it did not specify the domestic legal remedies pending or in process before their exhaustion, neither did it reveal the reasons the State deems them appropriate or effective. Therefore, the Court considers the preliminary objection to be inadmissible.

I. Alleged Statute of Limitations on the Petition Before the Commission for the Reparation of Moral and Material Damages

I.1. State arguments, Commission's and Representatives' Observations

94. The **State** alleged that in the event the Court considers Brazil without adequate domestic legal remedies to promote reparations for moral and material damages, it will be necessary to acknowledge the statute of limitations concerning such claims regarding possible violations that occurred in 1988, 1992, 1996 and 1997. The claim for moral and material damages regarding alleged violations that occurred on the Hacienda Brasil Verde in 1989 was presented to the Commission 10 years after the events occurred; that of 1992 was 5 years and 8 months after; that of 1996 was 2 years after. The pecuniary claim that was put before the Commission regarding events that occurred in 1997, more than 1 year and 4 months after. Therefore, the claim for pecuniary reparations regarding these alleged violations must be considered beyond the statute of limitations, because the six-month statute of limitation period had already expired before the case was presented to the Commission.

95. The **Commission** indicated that the State begins with the premise that specific domestic legal remedies for compensation must be exhausted if the goal is achieving reparations in the international arena. According to the Commission it is not necessary to exhaust independent legal remedies in order to obtain a reparation, especially if other methods have been exhausted, and therefore the objection must be considered inadmissible.

96. Regarding the statute of limitations on criminal investigation claims, the Commission reiterated that the State was aware of the situation at Hacienda Brasil Verde, without having undertaken a criminal investigation that could be considered effective; also, it determined that the consideration of the opportune presentation of the petition must be made within the context of the whole case and not on the basis of isolated events.

97. The **representatives** noted that the State's claim lacks substance, and therefore the objection presented must be withdrawn, given that it was not put forward at the opportune procedural moment, similar to their motion concerning the lack of exhaustion of domestic legal remedies.

I.2. The Court's Findings

98. The preliminary objection under consideration was not filed by the State during the period of admissibility for a petition before the Commission. In that sense, it is extemporaneous by virtue of it not being argued in the opportune procedural moment. Therefore, the Court dismisses the preliminary objection.

V. EVIDENCE

A. Documentary, Testimonial and Forensic Evidence

99. This Tribunal received various documents presented as evidence by the Commission and the parties, attached to their main briefs (*supra* paras. 3, 6 and 7). The Court also received statements sworn before a notary public (affidavit) from Maria do Socorro Canuto, José Armando Fraga Diniz Guerra, Ricardo Rezende Figueira, Valderez Maria Monte Rodrigues, Carlos Enrique Borildo Haddad, Luis Antônio Camargo de Melo, Mike Dottridge, Marcus Menezes Barberino Mendes, Michael Freitas Mohallem, Silvio Beltramelli Neto, Jonas Ratier Moreno, Marcelo Gonçalves Campos, Marinalva Dantas and Patricia Souto Audi.

100. Concerning the evidence presented during the public hearing, the Court heard testimonial statements from Leonardo Sakamoto and Ana Paula de Souza, and the expert testimony of César Rodríguez Garavito, Raquel Dodge, Ana Carolina Alves Araujo Román and Jean Allain.

101. Also during the *in situ* proceedings the Court heard statements from Marcos Antônio Lima, Francisco Fabiano Leandro, Rogerio Felix Silva, Francisco das Chagas Bastos Sousa and Antônio Francisco da Silva, as alleged victims. It also received statements from André Esposito Roston, Silvio Silva Brasil, Lélio Bentes, Oswaldo José Barbosa Silva and Christiane Vieira Nogueira, as informative declarants.

B. Admission of Evidence

102. This Tribunal admits documents presented within due procedural process on behalf of the parties and the Commission, and when their admissibility was not disputed or contested.[57]

103. Regarding documents referenced as electronic links, the Court has established that, if one party or the Commission provides at least the direct electronic link of the document that it cites as evidence and it is possible to access it, neither the legal security nor the procedural balance is affected because the Court and other parties can immediately locate it.[58] Accordingly the Court deems it pertinent to admit documents referenced as electronic links in the present case.

104. Regarding statements sworn before notary publics, the Court noted that, despite it being offered at the appropriate moment and requested in the Presidential Resolution of December 11, 2015 (*supra* para. 9), the representatives did not provide a statement sworn before a notary public from José Batista Gonçalves Afonso, nor did the State provide the statement of Dasalete Canuto Watanabe.

[57] *Cf. Velásquez Rodríguez vs. Honduras*. Background, para. 140, and *Herrera Espinoza et al,* para. 44
[58] *Cf. Escué Zapata vs. Colombia*. Background, Reparations and Costs, Judgment of July 4, 2007, C165, para. 26, and *Herrera Espinoza et al*, para. 45.

105. Furthermore, the Court deems it pertinent to declare inadmissible the statement sworn before a notary public by María Gorete Canuto, because the State did not proffer it at the opportune procedural moment nor was it required in the Presidential Resolution of December 11, 2015, or in the Court Resolution of February 15, 2016.

106. Also, the representatives noted that the statement Maria do Socorro Canuto made to the Federal Police is fraudulent because, in their judgment, it contained contradictions and inconsistencies and for that reason they requested the Court to reject said statement. The Court notes that said observations refer to the content and evidentiary value of the testimony and do not imply an objection to the admission of said evidence.[59] Furthermore, the representatives' objections regarding the statement's falsehood is a matter of domestic jurisdiction, and it is inappropriate to exclude evidence based on its inconsistency with one party's version of the facts, because such would imply the assumption of truth before having made a relevant evaluation of those facts.[60] Therefore the Court deems it appropriate to admit Maria do Socorro Canuto's statement and to consider it within the framework of the body of evidence.

C. Assessment of Evidence

107. As set out in Articles 46, 47, 48, 50, 51, 57 and 58 of the Rules, as well as in its case law concerning evidence and its consideration, the Court will examine and assess all the documentary evidence submitted by the parties and the Commission, statements, testimonies and expert opinions in establishing the facts of the case and ruling on the background. In doing so it will be subject to the principles of good judgment, within the appropriate regulatory framework, taking into account both the body of evidence and the allegations put forth.[61] Also in accordance with the jurisprudence of this Tribunal, statements made by the alleged victims cannot be reviewed in isolation but rather within the context of procedural evidence, inasmuch as they can provide more information about the alleged violations and their consequences.[62]

VI. FACTS

108. This chapter will explain the context regarding the case and specific facts within the Court's scope of jurisdiction.

109. Facts preceding the date of Brazil's ratification of the contentious jurisdiction of the Court (December 10, 1998) are only stated as part of the context and history of the case.

A. Context

A.1. History of Slave Labor in Brazil

[59] *Cf. Maldonado Ordoñez*, para. 29.
[60] *Cf. Quispialaya Vilcapoma*, para. 40.
[61] *Cf. "Panel Blanca" (Paniagua Morales et al.) vs. Guatemala*. Background, Judgment of March 8, 1998, C37, para. 76, and *Tenorio Roca,* para. 45.
[62] *Cf. Loayza Tamayo vs. Perú*. Background, Judgment of September 17, 1997, C33, para. 43, and *Tenorio Roca*, para. 46.

110. The slave trade has historically been tied to Portuguese colonization and forced labor in Brazil. In the first half of the 18th century, around 40% of the slave population in Brazil was involved in sugar cane cultivation. The transnational slave trade was abolished in 1850, which strengthened the slave abolition movement; by 1888 slavery was legally abolished in Brazil.

111. In spite of its legal abolition, poverty and the concentration of land ownership were structural causes that provoked the continuation of slave labor in Brazil.[63] Because they did not own land or have stable work situations, many workers in Brazil were subjected to exploitative situations that exposed them to the risk of inhumane and degrading conditions. In the 1960s and '70s, slave labor in Brazil increased due to the expansion of more modern methods of farming, which required a larger number of workers.[64] In the middle of the 20th century, industrialization intensified in the Amazonian region,[65] and the phenomenon of illegal possession and unregulated allocation of public lands became a trend, and along with it the consolidation of the practice of slave labor on farms owned by private companies or businesses run by families who owned great expanses of land.[66] Within this context there was no state control throughout northern Brazil, where some regional authorities became allies of the farm owners.[67] In 1995 the State began to officially recognize the existence of slave labor in Brazil.[68] According to the ILO, there were 12.3 million people in the world subjected to forced labor in 2010, 25,000 of whom were in Brazil.[69]

A.2. Characteristics of slave labor in Brazil

112. Most of the victims of slave labor in Brazil are workers from the northern and northeast regions of the country, from states characterized by being the most impoverished, with the highest rates of illiteracy and farm labor: Maranhão, Piauí and Tocantins,[70] among others. Workers from these states are attracted to states with the highest demand for slave labor: Pará, Mato Grosso, Maranhão and Tocantins.[71]

63 Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian. Brazil Mission, August 30, 2010, para. 23 (evidence file, page 163).
64 Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian. Brazil Mission, August 30, 2010, paras. 24 and 25 (evidence file, page 163).
65 International Labor Organization (ILO). Combatting modern slave labor: Brazil example. Brasilia, 2010, p. 61 (evidence file, page 364).
66 International Labor Organization (ILO). Combatting modern slave labor: Brazil example. Brasilia, 2010, p. 63 (evidence file, page 366).
67 International Labor Organization (ILO). Combatting modern slave labor: Brazil example. Brasilia, 2010, p. 63 (evidence file, page 366).
68 Brazil Ministry of Labor, Manual on combatting work conditions similar to slavery, November 2011 (evidence file, page 9991), and International Labor Organization (ILO). Combatting modern slave labor: Brazil example. Brasilia, 2010, p. 31 (evidence file, page 334).
69 International Labor Organization (ILO). Combatting modern slave labor: Brazil example. Brasilia, 2010, p. 56 (evidence file, page 359).
70 Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian. Brazil Mission, August 30, 2010, para. 28 (evidence file, page 163).
71 Expert testimony brief of Raquel Elias Ferreira Dodge, February 18, 2016 (evidence file page 15365). Special rapporteur report on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian. Brazil Mission, August 30, 2010, para. 28 (evidence file, page 163).

Activities that involve the most slave labor are cattle ranching, large-scale agriculture, deforestation and coal mining.[72]

113. The workers, for the most part poor men, "afro-descendent or black (mulattos)",[73] between the ages of 18 and 40,[74] are recruited in their home states by "*gatos*"[75] for work in distant states, on the promise of attractive salaries.[76] Upon arriving on the farms, the workers are informed that they are in debt to their contractors for transportation, food and lodging. The promised salaries are reduced and do not cover the costs already incurred. In some cases the workers go into further debt because they have to buy everything they need in the farm shops, at inflated prices. Their debt increases to the extent that they can never pay it back and so they are obliged to keep working.[77]

114. Workers are normally watched over by armed guards who do not allow them to leave the farms. If they try to flee they are usually caught.[78] Furthermore, the geographic location of the farms can itself be a factor that puts a limitation on the workers' liberty, because access to urban centers is often nearly impossible, not only because of the distance but also because of the precariousness of access roads.[79] Some workers suffer physical, sexual and verbal abuse, in addition to having to work in dangerous, unsanitary and degrading conditions.[80] Given their extreme poverty, their vulnerable situation and their being desperate for work, the workers often accept the working conditions described above.[81]

115. Regarding investigations into these facts and in accordance with the ILO, the impunity involved in this subjugation is due to the connections between the landowners and sectors of federal, state and

[72] Expert testimony brief of Raquel Elias Ferreira Dodge, February 18, 2016 (evidence file page 15365).
[73] Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian. Brazil Mission, August 30, 2010, para. 29 (evidence file, page 163).
[74] Public hearing testimony of Leonardo Sakamoto. Expert testimony brief of Raquel Elias Ferreira Dodge, February 18, 2016 (evidence file page 15368). Special rapporteur report on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian. Brazil Mission, August 30, 2010, paras. 15 to 40 (evidence file, page 163).
[75] This term is used to describe people who contact, recruit, transport and in some cases guard workers from their home states to the farms. See, among others, the testimonial statements before the Court of Leonardo Sakamoto, Ana Paula de Sousa and Raquel Dodge.
[76] Brazil Ministry of Labor, Manual on combatting work conditions similar to slavery, November 2011 (evidence file, page 10003). Expert testimony brief of Raquel Elias Ferreira Dodge, February 18, 2016 (evidence file page 15366). Public hearing testimony of Ana Paula de Souza. Special rapporteur report on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian. Brazil Mission, August 30, 2010, para. 31 (file 164).
[77] Brazil Ministry of Labor, Manual on combatting work conditions similar to slavery, November 2011 (evidence file, pages 10006 and 10007). Public hearing testimony of Ana Paula de Souza. Special rapporteur report on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian. Brazil Mission, August 30, 2010, para. 31 (evidence file, page 164).
[78] Brazil Ministry of Labor, Manual on combatting work conditions similar to slavery, November 2011 (evidence file, page 10004). Public hearing testimony of Ana Paula de Souza. Expert testimony brief of Raquel Elias Ferreira Dodge, February 18, 2016 (evidence file page 15368). Special rapporteur report on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian. Brazil Mission, August 30, 2010, para. 31 (evidence file, page 164).
[79] Brazil Ministry of Labor, Manual on combatting work conditions similar to slavery, November 2011 (evidence file, page 10005)
[80] Brazil Ministry of Labor, Manual on combatting work conditions similar to slavery, November 2011 (evidence file, page 10004). Expert testimony brief of Raquel Elias Ferreira Dodge, February 18, 2016 (evidence file pages 15372 and 15373). Public hearing testimony of Ana Paula de Souza. Special rapporteur report on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian. Brazil Mission, August 30, 2010, para. 33 (file 164).
[81] Public hearing testimony of Leonardo Sakamoto. Report of the Special rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian. Brazil Mission, August 30, 2010, para. 35 (file 164).

municipal power structures. Many landowners wield power and influence at different levels of domestic power, whether direct or indirect.[82]

A.3. Measures Adopted by the State

116. As of 1995, the Brazilian State has recognized the existence of slave labor and has begun to take actions toward combatting it.[83]

117. To that effect, among other measures, it issued Decree No. 1538, which created the Inter-Ministerial Group for the Eradication of Forced Labor (GERTRAF), involving various ministries and coordinated by the Labor Ministry, with the participation of various entities, institutions, and the International Labor Organization (ILO). The "Special Group for Mobile Audits" was also created, with the powers to act in rural zones and investigate allegations of slave labor, in support of the Group for the Eradication of Forced Labor's operations.[84]

118. In 2002, the Technical Cooperation Project "Combatting Slave Labor in Brazil" was formed with the help of the ILO.[85] It created the National Cooperation for the Eradication of Slave Labor,[86] and launched the First National Plan for the Eradication of Slavery in Brazil.[87] It also issued Law No. 10608/2002, relative to unemployment insurance of workers recruited under the regime of forced labor or conditions similar to slavery.[88]

119. In 2003 Law No. 10803/2003 was passed, which modified the wording of Article 149 of the Brazilian Criminal Code. It defined the concept of modern slave labor, specifying conducts of slavery in exchange for debt, extensive work days and degrading conditions.[89] It enacted ordinances No. 540, of October 15, 2004, and No. 2, of May 12, 2011, which instituted the Register of Offending Employers

82 Public hearing testimony of Leonardo Sakamoto. International Labor Organization (ILO). Combatting modern slave labor: Brazil example. Brasilia, 2010, p. 68 (evidence file, page 371).
83 Brazil Ministry of Labor, Manual on combatting work conditions similar to slavery, November 2011 (evidence file, page 9991). See, among others, Declaration of President Fernando Henrique Cardoso on June 27, 1995: "There are still Brazilians who labor without liberty. Long ago slaves had an owner. Modern Brazilian slaves change owners and never know what awaits them the following day. [...] Slave labor deprives the worker of his liberty of movement. It occurs, primarily, in the south of Pará. More than 8o% of the allegations filed with the Ministry of Labor come from Pará. On deforestation farms, for example, the slave laborer is supervised 24 hours a day, by well-armed guards. [...] their debt increases, they receive nothing at the end of the month and are obliged to continue working to pay off the debt. […] Today I am signing a decree to create an executive group for the repression of forced labor. […] Its first task will be to define very rigorous sanctions for people who turn Brazilians into slaves. [...] The problem of slave labor and degrading work in Brazil is very, very serious! Fortunately, not only is the government mobilizing to combat it. Various entities in civil society such as the Pastoral Land Commission are also taking action. This problem must be confronted by uniting forces and without religious or political interests [...] This is a call to Brazilians who are enslaved and to their families: Report it! [...] We must make a national effort to comply, definitively, with the Áureal Law." (evidence file, page 7108).
84 Testimony of José Armando Fraga Diniz Guerra rendered via affidavit, January 28, 2016 (evidence file, page 13314).
85 International Labor Organization (ILO). Combatting modern slave labor: Brazil example. Brasilia, 2010, p. 126 (evidence file, page 427).
86 Testimony of Jonas Ratier Moreno rendered via affidavit, January 29, 2016 (evidence file, page 13327).
87 Brazil Ministry of Labor, Retrospective on slave labor in Brazil: references for study and research, January 2012 (evidence file, page 9958). International Labor Organization (ILO). Combatting modern slave labor: Brazil example. Brasilia, 2010, p. 126 (evidence file, page 427).
88 Testimony of Jonas Ratier Moreno rendered via affidavit, January 29, 2016 (evidence file, page 13327).
89 Testimony of Jonas Ratier Moreno rendered via affidavit, January 29, 2016 (evidence file, page 13327).

(called the "Dirty List"), which contains the names of offenders who employ workers in slave conditions, available for financial institutions to consult when requests for credit are made.[90] Also, on July 31, 2003, the National Commission for the Eradication of Slave Labor (CONATRAF) was formed, replacing the Inter-Ministerial Group for the Eradication of Forced Labor (GERTRAF) formed in 1995. This commission included the participation of a greater number of Brazilian state institutions and members of civil society, and their aim was to articulate public policy for combatting slave labor.

120. In December of 2007, the Brazilian Federal Supreme Court set a definitive standard in extraordinary appeal RE No. 398041, regarding federal justice being the appropriate body of judicial power to judge crimes relative to conditions analogous to slavery as set forth in Article 149 of the Brazilian Criminal Code.

121. In 2008 it implemented the Second National Plan for the Eradication of Slave Labor.[91] In 2009, it enacted Law 12064/2009 which created the National Combat Slave Labor Day. On June 22, 2010, Brazil's Central Bank enacted resolution No. 3876, which prohibited giving rural loans to individuals or corporations on the Employer Register ("Dirty List") who kept workers in conditions similar to slavery.[92] On June 5, 2014, it published constitutional amendment No. 81 which in its Article 243 determined that it would expropriate urban and rural properties in any region of the country where slave labor exploitation was found.[93]

122. The Brazilian state has also created courses coordinated by the National Commission for the Eradication of Slave Labor (CONATRAF) with the goal of training and sensitizing regional and federal judges on the subject matter.[94]

A.4. Applicable Domestic Legislation

123. In 1943 the Consolidation of Labor Laws was issued[95] and in 1973 came the Statute of the Rural Laborer.[96] These standards did not contemplate an explicit prohibition of slave labor, but they established infractions in labor matters that corresponded to conduct that can be construed as slave labor.

[90] Public hearing testimony of Leonardo Sakamoto. International Labor Organization (ILO). Combatting modern slave labor: Brazil example. Brasilia, 2010, p. 146 (evidence file, page 447). Publication of the "Dirty List" was suspended on December 23, 2014 as a result of the Direct Action of Unconstitutionality resolution No. 5.209 (evidence file, page 7301). Subsequently it was reinstated by way of the Inter-ministerial Decision No. 2 on March 31, 2015 (evidence file, page 7409). Testimony of Jonas Ratier Moreno rendered via affidavit, January 29, 2016 (evidence file, page 13328).
[91] The Second National Plan for the eradication of slavery (evidence file, page 7189). Brazil Ministry of Labor, Retrospective on slave labor in Brazil: references for study and research, January 2012 (evidence file, page 9961). Testimony of Jonas Ratier Moreno rendered via affidavit, January 29, 2016 (evidence file, page 13329).
[92] Testimony of Michael Freitas Mohallem rendered via affidavit, February 4, 2016 (evidence file, page 14089).
[93] Testimony of Jonas Ratier Moreno rendered via affidavit, January 29, 2016 (evidence file, page 13329).
[94] International Labor Organization (ILO). Combatting modern slave labor: Brazil example. Brasilia, 2010, p. 145 (evidence file, page 446).
[95] Law Decree No. 5452, May 1, 1943 (evidence file, page 6188).
[96] Law No. 5889, June 8, 1973 (evidence file, page 6316).

124. Article 7 of the Brazilian Constitution of 1988 enshrines the rights of rural and urban workers.[97] Article 149 of the Brazilian Criminal Code of 1940 anticipated for the first time, in a general way, conduct that would reduce a person to conditions analogous to slavery in the following terms:

> "Reduce someone to conditions similar to those of a slave: prison sentence of 2 to 8 years."[98]

125. Article 197 of the Brazilian Criminal Code contemplated the crime of "infringement against the freedom of work;"[99] and Article 207 contemplated the crime of "illegal recruitment of workers from one location to another within the national territory."[100] The facts of the present case are concurrent with these norms being applicable.

126. In 1994 the first Administrative Instruction was enacted to establish the appropriate procedure for carrying out labor audits in rural areas and it also established orientations concerning procedures to be adopted in cases of forced labor and other situations that posed a risk to the life or health of workers.[101] This rule was reformed in 2006 and 2009.[102]

127. Law No. 10.803 from 2003 modified Article 149 of the Brazilian Criminal Code, classifying as a crime all conduct that reduces a person to conditions similar to slavery, in the following terms:

> Art. 149. Reducing someone to a condition similar to slavery, or subjugating him to forced labor or an exhausting work day, or subjugating him to degrading work conditions, or restricting his movement in any way or due to debt acquired with the employer or his representative.
>
> Penalty - imprisonment for two to eight years and a fine, plus a corresponding sanction for the violence.
>
> 1. The same penalties apply to those who:
>
> I.- restrict the use of any kind of transport in order to keep the worker at the workplace.
> II.- maintain continuous surveillance in the work place or take possession of the workers' documents or personal possessions in order to keep them at the workplace.
>
> 2. The penalty will increase by half if the crime is committed:

[97] Article 7 of the 1988 Political Constitution of the Federal Republic of Brazil.
[98] Article 149 of the Brazilian Criminal Code of 1940.
[99] Article 197 of the Brazilian Criminal Code of 1940: Constraining someone, through violence or serious threat: I – to practice or not practice a trade, profession or industry, to work or not work during a certain period or on certain days: Penalty - detention for one month to one year and a fine, plus the penalty commensurate with the violence; II – to open or close a place of work, or to help the shutdown of economic activity: Penalty - detention for three months to one year and a fine, plus the penalty commensurate with the violence.
[100] Article 207 of the Brazilian Criminal Code: Enticing workers from one locality to another within national borders. Art. 207 - Enticing workers, with the intention to bring them from one locality to another within national borders: Penalty - imprisonment for one to three years and a fine. § 1 Included in the same crime are people who recruit workers from outside the locality of the work place, within national borders, through fraud or charging whatever amount of money to the worker, including not guaranteeing provisions for a return to place of origin. § 2 The penalty will increase by one-sixth to one-third if the victim is less than 18 years of age, elderly, a pregnant woman, indigenous or a person with any kind of physical or mental disability.
[101] Inter-Secretarial Regulatory Instruction No. 1, March 24, 1994 (evidence file, page 6427).
[102] Inter-Secretarial Regulatory Instruction No. 65, July 31, 2006 (evidence file, page 6432).

I.- against a child or adolescent;
II.- for reasons of race, color, ethnicity, religion or origin.

A.5. Background Information

About Hacienda Brasil Verde

128. Hacienda Brasil Verde is located in the municipality of Sapucaia, in the southern part of the state of Pará, in the Federal Republic of Brazil.[103] The farm's total area is 8,544 hectares, land where cattle are raised.[104] The owner of Hacienda Brasil Verde at the moment of these facts being presented was João Luis Quagliato Neto.[105]

Allegations Presented in December 1988 and January 1989

129. On December 21, 1988, the Pastoral Land Commission (CPT) and the Conceição de Araguaia Diocese, together with José Teodoro da Silva and Miguel Ferreira da Cruz, father and brother respectively of lron Canuto da Silva, 17 years old, and Luis Ferreira da Cruz, 16 years old, presented an allegation to the Federal Police regarding the practice of slave labor at Hacienda Brasil Verde, and regarding the disappearance of the two adolescents.[106]

130. According to said allegation, in August of 1988, lron Canuto and Luis Ferreira da Cruz had been taken from Arapoema by a *gato* to work for a period of 60 days at Hacienda Brasil Verde. The allegation also noted that, upon trying to leave the farm, the adolescents had been forcibly returned, threatened and then subsequently disappeared, and therefore all their family members were worried about them.[107]

131. On that same date Adailton Martins dos Reis, a worker who had escaped from Hacienda Brasil Verde, alleged the following:

> I worked on the farm 30 days, here the [*gato*] promised me a lot of things and I took everything with me I would need for the job and once I got there he threw me in [the mud], [I was] plowing "*juquira*,"[108] living in a tent full of water, my wife just had an operation, my kids were sick, it was the worst kind of suffering. I needed to buy two bottles of medicine and they [charged] me Cz$3,000.00. When I left the farm, I went to take care of the bill and I still owed Cz$21,500 and I had to sell a hammock, a blanket, 2 machetes, 2 pots, plates, 2 spoons, and I still owed Cz$16,800 and I left in debt.
>
> [...] During this whole time they didn't pay me any money.

[103] Regional Supervisory Office of Pará, Federal Police (evidence file, page 550).
[104] Inspection audit (evidence file, page 548).
[105] Mission order 018/89 (evidence file, page 554).
[106] Allegation to the Federal Police, December 21, 1988 (evidence file, page 7428).
[107] Allegation to the Federal Police, December 21, 1988 (evidence file, page 7428).
[108] Vegetation/weeds that grow in the crop fields and that need turning in order to sow the ground.

> [...] When I wanted to go, he didn't allow me to leave, and I stayed there all morning in the rain, then Nelson the manager left us on the side of the road in the rain, me with [my] wife and sick children.
>
> In the farm we're really hungry, and the workers live in a very shameful state, many times I saw him promising to shoot the workers. And the situation continues, the workers want to leave peacefully, they need to flee, these past few days 7 escapees got out and without any money.[109]

132. On December 27, 1988, Mrs. Maria Madalena Vindoura dos Santos, resident of Arapoema, made an allegation about a similar situation involving her husband José Soriano da Costa.[110]

133. On January 25, 1989, the Pastoral Land Commission (CPT) sent a letter to the Council on Defense of the Human Rights in Brasilia (CDDPH), by which it registered allegations of slave labor at Hacienda Brasil Verde and Hacienda Belauto. The CPT noted that it had already presented an allegation related to Hacienda Brasil Verde on December 21, 1988, and requested that the need for auditing of both farms be reinforced, because it wasn't the first time that they'd been denounced for practicing slave labor.[111]

Site Visit to Hacienda Brasil Verde in 1989

134. On February 20, 1989, the Federal Police made a site visit to Hacienda Brasil Verde.[112] The February 24 report about this visit noted that: i) recruitment of workers on the farm was always carried out by *gatos*; ii) four *gatos* who worked on the farm had been identified; iii) one of the *gatos* had fled upon learning that the Federal Police were in the area and another one had been impossible to find; iv) the workers said they wanted a better salary, but they had accepted the job because they didn't find another one that paid any better. The workers indicated that they had the freedom to leave the farm.[113]

135. The report noted that vestiges of slave labor had not been observed at Hacienda Brasil Verde, but it corroborated the existence of low salaries and infractions in labor law, after having interviewed 51 workers. The report also pointed out that the workers stated that Iron Canuto and Luis Ferreira da Cruz had fled to the Hacienda Belém and said that it was normal for workers to escape because of debts incurred at Hacienda Brasil Verde.[114] There is no proof in the file that a list had been compiled with the names of the workers found at the time of this site visit.

Allegations and Actions in 1992

136. On March 18, 1992, the CPT sent a document to the Attorney General of the Republic (hereafter "AGR"), presenting the allegations made to the Federal Police in December of 1988, and to the Council

109 Statement of Adailton Martins dos Reis, December 21, 1988 (evidence file, page 558).
110 Statement of Maria Madalena Vindoura dos Santos, December 27, 1988 (evidence file, page 7432).
111 Allegation to the Council of Defense of Human Rights in Brasilia, January 25, 1989 (evidence file, page 7434).
112 Mission order No. 018/89, February 9, 1989 (evidence file, page 7436).
113 Federal Police Agent Report, February 24, 1989 (evidence file, page 7439).
114 Federal Police Agent Report, February 24, 1989 (evidence file, page 7439).

for the Defense of Human Rights in January of 1989, concerning slave labor at the Hacienda Brasil Verde, as well as the disappearances of lron Canuto and Luis Ferreira da Cruz.[115]

137. Said allegation was recorded on April 22, 1992, and the AGR initiated an administrative process.[116] On June 4, 1992, the Federal Police Department requested information on the matter[117] and on September 22 of the same year it reiterated said request.[118] On December 7, 1992, the Central Coordinator of the Federal Police Department responded to said request and provided information about the work carried out at Hacienda Brasil Verde in 1989.[119] The Federal Police Department stated that it had not confirmed the presence of slave labor and that the investigation was being conducted by the Pará regional office, without any significant updates being reported at the time.[120]

Site Visit to Hacienda Brasil Verde and Actions Yaken in 1993

138. On August 2, 1993, the Regional Labor Delegation (hereinafter "RLD") of the state of Pará informed the AGR that between June 26 and July 3 of 1993, on-site audits of various farms, including Hacienda Brasil Verde, had been carried out in the presence of four federal police agents.[121] The RLD noted that no signs of the practice of slavery were found, but that 49 workers were found without work registrations in their employment identification cards (CTPS). It also indicated that the process had determined that several workers who had been contracted irregularly and who expressed a desire to leave the farm must be returned to their place of origin.[122] No indication was made of the names of the workers without their work registrations nor of the ones who were sent back to their place of origin.

Actions Taken in 1994

139. On April 25, 1994, the Assistant Attorney General of the Republic sent a letter to the CPT to which was attached a report from March 29, 1994, regarding the visits made to the Hacienda Brasil Verde in 1989 and 1993.[123]

140. Said report indicated that the actions of the Federal Police in their visit to Hacienda Brasil Verde in 1989 had been insufficient because the declarations of the workers had not been taken down in writing; neither had they compiled a list with the names and details of those workers; they had not taken a statement from the farm manager; neither had they requested that work contracts be produced. Furthermore, there had been no follow-through on a search for the disappeared adolescents and there had

115 Document sent to Assistant Attorney General of the Republic, March 18, 1992 (evidence file, page 7471).
116 Document No. 706, Attorney General of the Republic, June 4, 1992 (evidence file, page 7473).
117 Document No. 707, Attorney General of the Republic, June 4, 1992 (evidence file, page 7474).
118 Document No. 1556, Attorney General of the Republic, September 22, 1992 (evidence file, page 7476).
119 Document No. 096/92, Central Police Coordination of the Federal Police Department, December 7, 1992 (evidence file, page 7478).
120 Document No. 096/92, Central Police Coordination of the Federal Police Department, December 7, 1992 (evidence file, page 7479).
121 Document No. 370/93, Regional Labor Delegation of Pará, August 2, 1993 (evidence file, page 7494).
122 Document No. 370/93, Regional Labor Delegation of Pará, August 2, 1993 (evidence file, page 7494).
123 Document No. 006, Assistant Attorney General of the Republic, April 25, 1994 (evidence file, page 566).

been no search for weapons at the farm, neither was there any verification of the prices of products for sale at the farm store.[124]

141. The report added that the failure to pay salaries, the *gato'*s escape while the site visit was happening and the controversy over the workers leaving or abandoning the job justified the implementation of a police investigation so that charges could eventually be pressed regarding the work structure and work conditions similar to slavery. Nevertheless, it pointed out that the majority of the crimes had already passed the statute of limitations. Concerning the crime related to conditions similar to slavery that had not yet passed the statute of limitations, it was not valid to prove its existence more than five years after the fact. Lastly it pointed out that, regarding the 1993 audit, there was no determination that a practice of slave labor existed, only of illegal recruitment or thwarting of labor laws.[125]

Site Visit to Hacienda Brasil Verde in 1996

142. On November 29, 1996, the Ministry of Labor Mobile Group carried out an audit at Hacienda Brasil Verde, in which it determined the existence of consistent irregularities concerning errors in employment registration and, in general, conditions contrary to labor regulations.[126] At the moment of the audit, 78 active workers were found, 34 of which had expired employment identification cards (CTPS).[127]

Site Visit to Hacienda Brasil Verde in 1997

143. On March 10, 1997, José da Costa Oliveira and José Ferreira dos Santos made a statement to the Federal Police Department of Pará, Marabá Office, in which they related having worked on and escaped from the Hacienda Brasil Verde.[128] In his statement, José da Costa Oliveira declared that the *gato* Raimundo had contracted him to work on the farm and, upon arrival, he already owed money for the costs of lodging and work implements the *gato* provided to him.[129] The declarants added that the workers were threatened with death if they reported the *gato* or the farm owner or if they tried to flee, and that it was a common practice to hide the workers when the Ministry of Labor carried out audits.[130]

144. Based on that complaint the Ministry of Labor's Mobile Group carried out another site audit at the Hacienda Brasil Verde on April 23, 28 and 29, 1997.[131] The audit report of that Ministry of Labor's site visit concluded that: i) workers were housed in sheds with straw and plastic roofs in which there was a "total lack of hygiene"; ii) various workers had skin illnesses, they received no medical attention and the water they consumed was not fit for human consumption; iii) all the workers had received threats,

[124] March 29, 1994 report (evidence file, page 568).
[125] March 29, 1994 report (evidence file, pages 568 and 569).
[126] Inspection report, November 29, 1996 (evidence file, page 7523).
[127] Inspection report, November 29, 1996 (evidence file, page 7523).
[128] Statements of José da Costa Oliveira and José Ferreira dos Santos, March 10, 1997 (evidence file, pages 845 to 847).
[129] Statements of José da Costa Oliveira and José Ferreira dos Santos, March 10, 1997 (evidence file, pages 845 to 846).
[130] Statements of José da Costa Oliveira and José Ferreira dos Santos, March 10, 1997 (evidence file, page 846).
[131] Report on site visit to the Hacienda Brasil Verde, Labor Mobile Group, April 23, 28 and 29, 1997 (evidence file, pages 4629 to 4638).

including threats with firearms, and iv) they said they were unable to leave the farm.[132] It also confirmed the practice of hiding workers when audits were underway[133]. At the time of the audit, 81 people were found, "approximately 45" of whose worker identification cards (CTPS) had expired.[134]

Criminal proceedings against Raimundo Alves de Rocha, Antônio Alves Vieira and João Luiz Quagliato Neto

145. As a consequence of the Labor Ministry's report (*supra* para. 144), on June 30, 1997, the Federal Public Prosecutor filed criminal charges against: a) Raimundo Alves de Rocha, *gato* or employer of rural workers, for crimes described in Articles 149 (slave labor), 197(1) (infringement of the freedom to work) and 207 (trafficking of workers) of the Criminal Code; b) Antônio Alves Vieira, manager of Hacienda Brasil Verde, for crimes described in Articles 149 and 197(1) of the Criminal Code, and c) João Luiz Quagliato Neto, owner of Hacienda Brasil Verde, for the crime described in Article 203 (violation of labor laws) of the Criminal Code.[135] In said indictment the Public Prosecutor considered that:

> The Hacienda Brasil Verde regularly contracted temporary rural laborers ("workers") to cut *juquira*, by recruiting them, like the 32 workers recruited [...] in the municipality of Xinguara, by [...] an employer, in this case the accused Raimundo Alves da Rocha, between March 24 and April 14 of the current year [...] to work in another location, in exchange for a salary. A portion of said salary is advanced before arriving at the work location [...]
>
> Upon arriving at the farm, the workers are housed in shacks covered in plastic and straw, with no walls for protection [...] The water they drink [...] is not fit for human consumption, because it serves as bathroom water as well as drinking water for the farm animals [...] Food, such as meat exposed to insects and the elements is delivered by [one of the] accused [...] via the system of a small store controlled by the [...] intermediary on the farm at the behest of the manager [...] Antônio Alves Vieira.
>
> Several workers [...] declared that they were forbidden from leaving the farm as long as they had debts, under threat of death [...] they had to acquire food at exorbitant prices [...] and from the beginning of their labor they had the debt from the hotel [...] the pitiful salary they would receive would never be enough to pay their debts. In that respect, the farm owner made profits from arranging that the workers never receive any salary for services rendered [...]
>
> [...] The only exit on the farm was blocked off by the office buildings and the house of the manager who did not allow workers to leave [...]
>
> Combined with these facts, the audit report concurred with a worker's previous complaint [...] and several blank promissory notes [were found], bearing signatures of the workers.
>
> [...] In December of 1996 the same irregularities were confirmed by the audit, also, in 1989, there were already reported claims against work organization and work conditions similar to slavery.

[132] Report on site visit to the Hacienda Brasil Verde, Labor Mobile Group, April 23, 28 and 29, 1997 (evidence file, pages 4629 to 4630).
[133] Report on site visit to the Hacienda Brasil Verde, Labor Mobile Group, April 23, 28 and 29, 1997 (evidence file, page 4637).
[134] Report on site visit to the Hacienda Brasil Verde, Labor Mobile Group, April 23, 28 and 29, 1997 (evidence file, page 4637).
[135] Federal Public Prosecutor Indictment, June 30, 1997 (evidence file, pages 4623 and 4625 to 4628).

> Due to lack of investigation into the facts at the time and the statute of limitations of the other crimes, when the facts came to the attention of the Federal Public Prosecutor it was impossible to propose criminal action [...] The farm owner, the third man accused, was well aware that at the very least he was committing the crime of thwarting labor law through fraud.[136]

146. Due to the penalty incurred being less than a year for the crime Quagliato Neto was accused of, the Public Prosecutor proposed the suspension of the prosecution against him if he agreed to comply with specific conditions imposed on him by the federal judge.[137]

147. In July 1997, the federal judge issued a subpoena for Alves de Rocha and Alves Vieira.[138] On September 17, 1997, the federal judge ordered a subpoena for Quagliato Neto and conditioned the suspension of the prosecution on acceptance of and compliance with a series of measures.[139]

148. Between September 1997 and June 1999, several subpoenas were sent to João Luiz Quagliato Neto.[140]

Proceedings Carried Out by the Ministry of Labor Relating to Second Site Visit in 1997

149. On July 31, 1997, the Regional Labor Prosecutor's Office (RLP) of the 22nd region informed the Regional Labor Prosecutor's Office of the 8th region about "the irregularity concerning the traffic of laborers from the interior of Piauí to other states, including to the state of Pará."[141] On August 12, 1997, an administrative procedure was established in the 8th regional office, requesting that the national Attorney General's office make a determination of the possible illicit crimes committed in relation to the trafficking of workers.[142]

150. On November 14, 1997, the Regional Labor Delegation (RLD) of Pará issued a report regarding the Hacienda Brasil Verde, which stated that even though errors existed, such as charging workers for their shoes and the lack of resources necessary for security and hygiene on the job, the RLD "[had preferred] not to act, and work on the assumption the errors were being corrected and [...] labor regulations were taken into account. [The] procedure was a form of incentive and stimulus for the progress presented by the employer to conform with the ideal demanded by the legislation."[143]

136 Federal Public Prosecutor Indictment, June 30, 1997 (evidence file, pages 4623 to 4626).
137 Federal Public Prosecutor Indictment, June 30, 1997 (evidence file, pages 4627).
138 Document No. 1183, Federal Judge of Marabá, July 14, 1997 (evidence file, page 4711).
139 Decision of Federal Judge of Marabá, September 17, 1997 (evidence file, page 4719).
140 Documents from the Judicial Office of Marabá (evidence file, pages 4722, 4724, 4727, 4728, 4730, 4731, 4732 and 4735).
141 Document No. 2.357/2001, Public Labor Ministry, June 21, 2001 (evidence file, page 7525).
142 Document No. 2.357/2001 (evidence file, page 7525).
143 Document No. 2.357/2001 (evidence file, page 7526).

151. On January 13, 1998, the Labor Prosecutor requested a new inspection of the Hacienda Brasil Verde.[144] On March 5, 1998, the RLD of Pará responded that the inspection had not been made but that it "was scheduled".[145]

152. On June 17, 1998 the Ministry of Labor requested information about the "current situation" at the Hacienda Brasil Verde based on news reports in the "*O Liberal*" newspaper on May 31, 1998.[146] On July 8, 1998, the Regional Labor Representative reported that the audit of the farm had been done in October of 1997, in which "considerable progress" had been observed regarding the irregularities reported in the previous audit.[147]

B. Facts within the temporal jurisdiction of the Court

B.1. Continuation of the Criminal Proceedings against Raimundo Alves de Rocha, Antônio Alves Vieira and João Luiz Quagliato Neto

153. On September 13, 1999, Quagliato Neto appeared in the preliminary hearing of the case.[148] The next day of said hearing Quagliato Neto declared that he accepted the conditions imposed by the federal judge for the suspension of his case, namely: the delivery of six food baskets to a charity in the city of Ourinhos in the state of São Paulo.[149] On September 23, 1999, by request of the Public Prosecutor, the federal judge authorized the conditional suspension for two years of the proceedings against João Luiz Quagliato Neto.[150]

154. Between December 10, 1998 and May 1999, Raimundo Alves de Rocha and Antônio Alves Vieira were subpoenaed on various occasions.[151] On May 23, 1999, they presented their defense briefs.[152] On March 2, 2000, the agents from the Ministry of Labor who performed the 1997 audits gave their testimony.[153]

155. Several evidentiary hearings were scheduled during the year 2000, however, on March 16, 2001, the deputy federal judge in charge of the case declared the "absolute lack of jurisdiction of the Federal Justice System" to rule on the proceedings, due to the crimes being investigated constituting violations of the individual rights of a group of laborers, and not crimes carried out against labor organization, and therefore the case had to be sent to the state court in Xinguara, Pará.[154] The judge observed that, based on the jurisprudence, inasmuch as it involved jurisdiction *ratione materiae*, it was not susceptible to a

144 Document No. 2.357/2001 (evidence file, page 7526).
145 Document No. 2.357/2001 (evidence file, page 7526).
146 Document No. 2.357/2001 (evidence file, page 7526).
147 Document No. 2.357/2001 (evidence file, page 7526).
148 Preliminary hearing, September 13, 1999 (evidence file, page 4765).
149 João Luiz Quagliato Neto's brief, September 14, 1999 (evidence file, page 4767).
150 Decision of deputy federal judge of Marabá, September 23, 1999 (evidence file, page 4768).
151 Documents from Marabá Judicial Branch, (evidence file, pages 4723, 4725, 4729, 4730, 4732, 4733, 4737 and 4739).
152 Raimundo Alves de Rocha's brief (evidence file, page 4750). Antônio Vieira's brief (evidence file, page 4752).
153 Testimonial statements (evidence file, pages 4784 to 4791).
154 Decision of deputy federal judge of Marabá, March 16, 2001 (evidence file, pages 4813 to 4816).

continuance, under penalty of absolute invalidity, as imposed by the authority of his position.[155] Against which decision no legal remedy could intervene.

156. On August 8, 2001, the proceedings were resumed by the state judiciary of Xinguara, and on October 25, 2001, the Prosecutor's office ratified the indictment. Subsequently, on May 23, 2002, the judge accepted the indictment.[156] On May 28, 2002, the defense for Quagliato Neto requested that the criminal case against him be closed.[157]

157. On November 11, 2002, Raimundo Alves Rocha and Antônio Vieira presented their defense brief and on August 5, 2003, the judge set new dates for receiving defense testimony.[158] The first defense statements were received on October 24 and November 18, 2003.[159]

158. On November 21, 2003, the Public Prosecutor of the State of Pará presented its final arguments, in which it requested that the indictment against Raimundo Alves da Rocha and Antônio Alves Vieira be considered inadmissible and that they be absolved, due to the lack of sufficient evidence of their responsibility.[160]

159. On November 8, 2004, the state judicial system declared itself lacking jurisdiction to try the criminal proceeding, which created a conflict of jurisdictions.[161] On September 26, 2007, the Third Circuit of the Superior Court of Justice informed the state judge that, after studying the conflict of jurisdictions in the case, it had decided that the competent jurisdiction was at the federal level.[162] On December 11, 2007, it remitted the case file to the federal judicial body of Marabá, Pará.[163]

160. After having been subpoenaed to appear on various occasions in 2008, Raimundo Alves da Rocha and Antônio Alves Vieira failed to appear and in light of their absence, on July 3, 2008, the judge granted a period for the parties' final arguments.[164] On July 10, 2008, the Federal Public Prosecutor presented his final arguments, in which he requested the criminal case against Raimundo Alves da Rocha and Antônio Alves Vieira be closed.[165] In that respect he observed the following:

> [...] the Ministry of Labor's audit report details the inhospitable conditions the workers lived in at Hacienda Brasil Verde, no potable water, sleeping in shacks covered with plastic and straw, dirt floors and no bathroom fixtures, no personal safety equipment, no protection against the elements. It also verified the practice of using fraud to jeopardize rights protected by labor legislation.

155 Decision of deputy federal judge of Marabá, March 16, 2001 (evidence file, page 4816).
156 Ratification of the indictment (evidence file, pages 4824 to 4826).
157 Request for termination of criminal action, May 28, 2002 (evidence file, page 4900).
158 State judge resolution, August 5, 2003 (evidence file, page 5523).
159 Hearing for testimonial evidence, October 24, 2003 (evidence file, page 5528), and November 18, 2003 (evidence file, page 5532).
160 Final arguments of the Public Prosecutor of Pará (evidence file, pages 5544 to 5547).
161 Declaration of conflict of jurisdictions (evidence file, pages 5557 to 5560).
162 Decision of the Superior Court of Justice (evidence file, page 5588).
163 Transit receipt of case file (evidence file, page 5592).
164 Resolution of the Federal Judge, May 26, 2008 (evidence file, page 5600).
165 Final arguments of the Federal Public Prosecutor (evidence file, pages 5616 to 5621).

> [...] there is sufficient evidence of the perpetration of the practice of crimes in the reduction of conditions similar to slavery (art. 149), infringement of the freedom to work (art. 197.1) and illegal recruitment of laborers from one location to another within national borders (art. 207), by means of detention for debts.
>
> [...] regardless of the confirmation of the perpetration and materialization of a criminal plot, the crimes described in Articles 197(1) and 207 of the Criminal Code were unfortunately already past the statute of limitations, considering that the facts took place between April, 21 and 30, 1997, and the maximum penalty for the respective crimes is from one to three years. That being the case, the statute of limitations on the state's criminal action applies, based on Article 109, VI of the Brazilian Criminal Code.
>
> In relation to the crime described in Article 149 of the Criminal Code, even though the maximum penalty will be consummated in April of 2009, it must be concluded in favor of the verification of the statute of limitations having passed for the penalty in question, considering that this legal body did not foresee larger elements that could make possible sufficient aggravation of the eventual sanction applied.[166]

161. On July 10, 2008, in a court ruling, the Federal Judge of Pará declared the criminal case against Raimundo Alves da Rocha and Antônio Alves Vieira to be closed, considering that more than 10 years had passed since the first complaint against them was made, the maximum applicable penalty was eight years and the statute of limitation was 12 years, therefore only in the case of being sentenced to the maximum time would the statute of limitations not have expired.[167] The judge affirmed that it was "quite improbable" that they would receive such a sentence, because the statute of limitations would be "inevitable". He observed that the evidentiary elements the criminal case relied on were "useless." Based on the foregoing, as well as the lack of action on the part of the State, criminal policy and procedural economy, the judge ruled to close the criminal proceeding.[168]

B.2. Continuation of the Ministry of Labor's Procedures Relative to a Second Site Visit in 1997

162. On October 13, 1998, the Public Ministry of Labor asked the Regional Labor Delegation of Pará to conduct a new audit of the farm, given how much time had passed since the last one.[169] On February 8, 1999 the RLD of Pará reported that it had not done the audit due to lack of financial resources.[170] On June 15, 1999, the Ministry of Labor reiterated its request.[171]

166 Final arguments of the Federal Public Prosecutor (evidence file, pages 5619 to 5621).
167 Sentence on July 10, 2008 (evidence file, page 5622).
168 Sentence on July 10, 2008 (evidence file, page 5622).
169 Document No. 2.357/2001 (evidence file, page 7526).
170 Document No. 2.357/2001 (evidence file, page 7527).
171 Document No. 2.357/2001 (evidence file, page 7527).

163. On January 15, 1999, the Labor Prosecutor's Office recommended to the owner of the Hacienda Brasil Verde that he abstain from the practice of charging workers for shoes "under penalty of legal measures being taken" in that regard.[172]

B.3. Site visit to the Hacienda Brasil Verde in 2000

164. During the month of February 2000, the *gato* known as "Meladinho" recruited laborers in the Municipality of Barras, in the state of Piauí, to work at the Hacienda Brasil Verde.[173] The *gato* said that the salary they would receive would be $R10 per "*alqueire de juquira roçada*,"[174] which the workers considered to be a very attractive salary. Also, as part of the offer, the *gato* gave to the ones who were interested an advance on their salary of between R$30-$R60. He also offered them transportation, as well as food and lodging during their stay on the farm.

165. In order to arrive at the Hacienda Brasil Verde, the recruited workers had to travel approximately three days by bus, train and truck. Regarding the train portion of the trip, the alleged victims explained the trip caused them much suffering, because they were put in cars without seats, not fit for human transport. They also stated that the truck was used to transport animals, and so they had to share space with the animals, and felt deep humiliation. The workers also had to stay one night in a hotel in the town of Xinguara, which left them in debt.[175]

166. When the workers arrived at the Hacienda Brasil Verde they handed over their employment registration cards to the manager known as "Toninho," without ever subsequently getting them back. The manager also made them sign blank documents. The State was aware of this practice because of previous inspections.[176] When they arrived at the farm, the workers realized that nothing they had been promised was true.[177] Regarding lodging conditions, the workers slept in wooden shacks without electricity, beds or

[172] Document No. 2.357/2001 (evidence file, page 7527).
[173] *Cf.* March 31, 2000 labor inspection report on the Hacienda Brasil Verde (evidence file, pages 9571 to 9573); statement of Francisco Fabiano Leandro, received during in situ proceedings on June 6, 2016; statement of Francisco das Chagas Bastos Souza, received during in situ proceedings on June 6, 2016, and statement of Antônio Francisco da Silva, received during in situ proceedings on June 6, 2016.
[174] "*Alqueire*" is a unit of measure used in some rural regions of Brazil.
[175] *Cf.* Statement of Marcos Antônio Lima, received during in situ proceedings on June 6, 2016; statement of Francisco Fabiano Leandro, received during in situ proceedings on June 6, 2016; statement of Rogerio Félix da Silva, received during in situ proceedings on June 6, 2016; statement of Francisco das Chagas Bastos Souza, received during in situ proceedings on June 6, 2016; statement of Antônio Francisco da Silva, received during in situ proceedings on June 6, 2016; statement of José Batista Gonçalves Afonso, regional coordinator of the CPT, regarding the situation of Antônio Francisco da Silva and Gonçalo Luiz Furtado, given on March 8, 2000 (evidence file, page 1038); statement of Francisco de Assis Félix, given before a notary public on May 8, 2015 (evidence file, page 7570), and statement of Vanilson Rodrigues Fernandes, Labor Prosecutor, given before the Court of Marabá, in relation to the 1997 audit (evidence file, page 4787).
[176] *Cf.* Document 8th Regional Legal Prosecutor's Office 2357/2001, June 21, 2001, page 9573.
[177] *Cf.* Statement of Marcos Antônio Lima, received during in situ proceedings on June 6, 2016; statement of Rogerio Félix da Silva, received during in situ proceedings on June 6, 2016; statement of Francisco das Chagas Bastos Souza, received during in situ proceedings on June 6, 2016; statement of Antônio Francisco da Silva, received during in situ proceedings on June6, 2016; statement of José Batista Gonçalves Afonso, regional coordinator of the PEC, regarding the situation of Antônio Francisco da Silva and Gonçalo Luiz Furtado, given on March 8, 2000 (evidence file, page 1038); statement of Antônio Fernandes da Costa, given before a notary public on May 8, 2015 (evidence file, page 7565); statement of Francisco de Assis Félix, given before a notary public on May 8, 2015 (evidence file, page 7570); March 31, 2000 labor inspection report on Hacienda Brasil Verde (evidence file, pages 9573 and 9574), and Public Civil Action presented by the Ministry of Labor against João Luiz Quagliato – Hacienda Brasil Verde, May 30, 2000 (evidence file, page 1049).

closets. The walls were unmatched boards and the roof was a tarp, which meant the workers got wet when it rained. Dozens of workers slept in a single shack, in hammocks or nets. The bathroom and shower were in a deplorable state, outside the shack in the brush, with no walls or roof. Because of the bathrooms being so filthy, some workers preferred to relieve themselves in the weeds and bathe in a ravine, or not at all.[178]

167. Furthermore, the food the workers received was insufficient, repetitive and of poor quality. The food was prepared by the farm's cook in a substandard space open to the outdoors. The water they consumed came from a small spring surrounded by overgrown vegetation; it was stored in inadequate containers and distributed in shared bottles. During the workday, the workers had lunch in the fields where they worked. Also, all the food they consumed was recorded in notebooks so that it could later be discounted from their salaries.[179]

168. The workers were violently awakened at 3AM by one of the farm managers. Then they had to get to the fields where they were working, several kilometers distant, either on foot or in a truck. The workday lasted 12 hours or more, from approximately 6AM to 6PM, with 30 minutes for lunch. The workers were divided into groups of about 10 people and they worked cutting *juquira*. Once their workday was done, the workers were picked up in a truck and returned to their shacks. Sunday was their only day off.[180]

169. Because they were consuming contaminated water and working in the rain with their feet submerged in water, among other reasons, some workers got sick easily and regularly. In particular, the workers suffered foot funguses, which caused them a lot of pain, to the point of not being able to put work boots on to do their jobs. There were no medical personnel to attend to them on the farm, however: neither did they receive visits from doctors in nearby towns. If the ailing workers wanted to get medicine, they had to ask it of the farm managers, who went into town and bought it, then discounted it from the workers'

178 *Cf.* Statement of Marcos Antônio Lima, received during in situ proceedings on June 6, 2016; statement of Francisco Fabiano Leandro, received during in situ proceedings on June 6, 2016; statement of Rogerio Félix da Silva, received during in situ proceedings on June 6, 2016; statement of Francisco das Chagas Bastos Souza, received during in situ proceedings on June 6, 2016; statement of Antônio Francisco da Silva, received during in situ proceedings on June 6, 2016; statement of Antônio Fernandes da Costa, given before a notary public on May 8, 2015 (evidence file, page 7566); statement of Francisco de Assis Félix, given before a notary public on May 8, 2015 (evidence file, page 7570), and March 31, 2000 labor inspection report on Hacienda Brasil Verde (evidence file, page 9574).

179 *Cf.* Statement of Marcos Antônio Lima, received during in situ proceedings on June 6, 2016; statement of Rogerio Félix da Silva, received during in situ proceedings on June 6, 2016; statement of Francisco das Chagas Bastos Souza, received during in situ proceedings on June 6, 2016; statement of José Batista Gonçalves Afonso, regional coordinator of the CPT, regarding the situation of Antônio Francisco da Silva and Gonçalo Luiz Furtado, given on March 8, 2000 (evidence file, page 1038); statement of Antônio Fernandes da Costa, given before a notary public on May 8, 2015 (evidence file, page 7566); statement of Francisco de Assis Félix, given before a notary public on May 8, 2015 (evidence file, pages 7571 and 7572), and March 31, 2000 labor inspection report on Hacienda Brasil Verde (evidence file, page 9574.

180 *Cf.* Statement of Marcos Antônio Lima, received during in situ proceedings on June 6, 2016; statement of Francisco Fabiano Leandro, received during in situ proceedings on June 6, 2016; statement of Rogerio Félix da Silva, received during in situ proceedings on June 6, 2016; statement of Francisco das Chagas Bastos Souza, received during in situ proceedings on June 6, 2016; statement of José Batista Gonçalves Afonso, regional coordinator of the PEC, regarding the situation of Antônio Francisco da Silva and Gonçalo Luiz Furtado, given on March 8, 2000 (evidence file, page 1038); statement of Francisco de Assis Félix, given before a notary public on May 8, 2015 (evidence file, page 7570), and March 31, 2000 labor inspection report on Hacienda Brasil Verde (evidence file, page 9573).

salaries. Since their pay was based on their work production, the workers had to go to the fields in spite of being sick.[181]

170. Additionally, in order to receive a salary the workers had to meet a production goal assigned to them by the farm managers. Meeting said goal was very difficult, however, which was a reason they never received payment for their services.[182]

171. The workers were also obliged to carry out their work under order and threat of the farm managers. Said managers carried firearms and surveilled them continuously. Additionally, one of the managers in charge of surveillance told the alleged victims that he had killed a worker after an argument, and buried him on the farm, so the workers were scared the same thing would happen to them. Also, Antônio Francisco da Silva made a complaint to the federal police about the disappearance of a co-worker at the Hacienda Brasil Verde and because of that the workers could not leave the farm and feared for their lives.[183]

172. As a consequence of being prevented from leaving the farm, if the workers needed to buy something, they had to ask the farm managers to go to the city and buy it and bring it back to them, which resulted in a commensurate deduction from their salary.[184]

173. The situation in which the workers found themselves created in them a deep desire to flee the farm. However, the surveillance they were under, together with the lack of income, the isolated location of the farm and the presence of wild animals in the vicinity, prevented them from returning home. Furthermore, if the managers in charge of surveillance caught someone attempting to escape from the farm, they not only returned him, but ripped his clothes and tore apart the hammock where he slept.[185]

181 *Cf.* Statement of Marcos Antônio Lima, received during in situ proceedings on June 6, 2016; statement of Rogerio Félix da Silva, received during in situ proceedings on June 6, 2016; statement of Antônio Francisco da Silva, received during in situ proceedings on June 6, 2016; statement of Antônio Fernandes da Costa, given before a notary public on May 8, 2015 (evidence file, page 7566), and statement of Francisco de Assis Félix, given before a notary public on May 8, 2015 (evidence file, page 7571).

182 *Cf.* Statement of Marcos Antônio Lima, received during in situ proceedings on June 6, 2016; statement of Francisco Fabiano Leandro, received during in situ proceedings onJune 6, 2016; statement of Rogerio Félix da Silva, received during in situ proceedings on June 6, 2016; statement of Francisco das Chagas Bastos Souza, received during in situ proceedings on June 6, 2016; statement of José Batista Gonçalves Afonso, regional coordinator of the CPT, regarding the situation of Antônio Francisco da Silva and Gonçalo Luiz Furtado, given on March 8, 2000 (evidence file, page 1038); statement of Francisco de Assis Félix, given before a notary public on May 8, 2015 (evidence file, page 7571), and March 31, 2000 labor inspection report on Hacienda Brasil Verde (evidence file, page 9573).

183 *Cf.* Statement of Marcos Antônio Lima, received during in situ proceedings on June 6, 2016; statement of Rogerio Félix da Silva, received during in situ proceedings on June 6, 2016; statement of Antônio Francisco da Silva, received during in situ proceedings on June 6, 2016; statement of José Batista Gonçalves Afonso, regional coordinator of the PEC, regarding the situation of Antônio Francisco da Silva and Gonçalo Luiz Furtado, given on March 8, 2000 (evidence file, page 1038); statement of Francisco de Assis Félix, given before a notary public on May 8, 2015 (evidence file, pages 7570 to 7572), and March 31, 2000 labor inspection report on Hacienda Brasil Verde (evidence file, page 9572).

184 Cf. Statement of Rogerio Félix da Silva, received during in situ proceedings on June 6, 2016, and statement of Francisco de Assis Félix, given before a notary public on May 8, 2015 (evidence file, page 7572).

185 Cf. Statement of Marcos Antônio Lima, received during in situ proceedings on June 6, 2016; statement of Rogerio Félix da Silva, received during in situ proceedings on June 6, 2016; statement of Francisco das Chagas Bastos Souza, received during in

174. The adolescents named Antônio Francisco da Silva and Gonçalo Luiz Furtado decided to leave the farm during the first week of March 2000. Between the 3rd and 5th of March, around 3AM, one of the managers came to the shack to wake the workers. Antônio Francisco da Silva had a fever, and his friend Gonçalo Luiz Furtado was finding work difficult because he had a leg prosthesis. The foreman asked them in an aggressive way if they were going to work, and they responded that they could not because they were sick. The foreman beat them, put them on a truck and took them to the farm's main office. There Gonçalo Luiz Furtado was beaten again and they told him they were going to tear the prosthesis off his leg. One of the guards threatened to tie them up for 15 days and even to kill them in that instant. Both boys were very frightened. The guard took them to a back room in the office, beat them again and then went to talk with the other farm managers. The boys took advantage of that moment and escaped. They walked into the forest because they were scared they would get caught if they took the road. They drank groundwater and water from the streams they found along the way.[186]

175. Later on the boys came to a road. They managed to flag down a gasoline transport truck that passed by, they told the driver what had happened to them, and he agreed to take them to the town of Marabá. When the boys found the police station, on March 7, 2000, they went in and explained their situation to an officer who was on duty. The police officer responded, however, that he couldn't help them because the station chief wasn't working and because it was a carnival holiday. He told them to come back in two days. The two boys slept on the streets of Marabá and went back to the federal police. That day they talked to a police officer, but were advised to go to the CPT for help. The CPT took care of the boys for several days.[187]

176. The police officer who sent the boys to the offices of the Pastoral Commission informed the CPT that contact had been made with the Ministry of Labor, and they had promised to send a team of legal labor auditors and federal police from Marabá to the Hacienda Brasil Verde to register the appropriate complaints.[188]

177. On March 15, 2000, an inspection of the farm was made by the Ministry of Labor's inspectors, in the company of Federal Police agents. Upon arrival at the Hacienda Brasil Verde they only found about 45 laborers there. They went to the Hacienda San Carlos where they found the rest of the workers. The police interrogated the workers, asking them about their arrival on the farm, their salaries and for their personal

situ proceedings on 6, June 2016; statement of Antônio Francisco da Silva, received during in situ proceedings on June 6, 2016; statement of Antônio Fernandes da Costa, given before a notary public on May 8, 2015 (evidence file, page 7566); statement of Francisco de Assis Félix, given before a notary public on May 8, 2015 (evidence file, page 7573), and March 31, 2000 labor inspection report on Hacienda Brasil Verde (evidence file, page 9572).

186 Cf. Statement of Antônio Francisco da Silva, received during in situ proceedings on June 6, 2016; statement of José Batista Gonçalves Afonso, regional coordinator of the CPT, regarding the situation of Antônio Francisco da Silva and Gonçalo Luiz Furtado, given on March 8, 2000 (evidence file, page 1038), and March 31, 2000 labor inspection report on Hacienda Brasil Verde (evidence file, page 9572).

187 Cf. Statement of Antônio Francisco da Silva, received during in situ proceedings on June 6, 2016; statement of José Batista Gonçalves Afonso, regional coordinator of the CPT, regarding the situation of Antônio Francisco da Silva and Gonçalo Luiz Furtado, given on March 8, 2000 (evidence file, page 1038), and March 31, 2000 labor inspection report on Hacienda Brasil Verde (evidence file, page 9572).

188 Letter to the Ministry of Labor, March 9, 2000 (evidence file, page 7534).

identification documents. The workers were asked if they wished to leave the farm and return to their homes, to which all of the workers expressed their "unanimous decision to leave" and return to their cities of origin from which they had been recruited.[189] The rescue did not take place that day, however, and the workers had to sleep that night on the farm, a situation which provoked a lot of fear in them, because they were afraid the farm managers would kill them while they slept.[190] The RLD of Pará also verified the presence of armed guards at the farm.[191] It also confirmed that the workers were made to sign blank contracts with terms both determined and undetermined.[192]

178. The next day, the inspectors from the Ministry of Labor obliged a farm employee to pay the workers the amount of compensation owed them for their labor and to terminate their labor contracts. The farm manager was also obliged to give the employment registration cards back to the workers. The police officers gave the workers their employment registration cards, other documents and their money. However, even though the rescued workers were illiterate and disconcerted by the situation, the state agents did not explain to them why they were receiving the money, or the meaning of the documents being handed over to them. The oversight report indicated the presence of 82 people working on the farm.[193]

B.4. Procedure carried out by the Ministry of Labor relative to 2000 Site Visit

179. On May 30, 2000, based on the oversight report from March 15, 2000, the Labor Prosecutor's office filed a public civil lawsuit with the Labor Rights Court against the owner of Hacienda Brasil Verde, João Luiz Quagliato.[194] The Labor Prosecutor concluded that: i) the Hacienda Brasil Verde kept its workers in "a private prison system"; ii) "the work was characterized as a system of slavery", and iii) the situation was aggravated because it dealt with rural workers who were illiterate and uneducated who had been forced into "degrading living conditions."[195]

180. Due to the above, the Labor Prosecutor's office concluded that João Luiz Quagliato must "cease slave labor, stop forced labor and the system of imprisonment and never more practice slave labor because it is a crime and infringement upon the freedom to work."[196]

181. On June 9, 2000, the Conciliation and Judgment Board of Conceição do Araguaia called for a hearing with the Labor Prosecutor's office and João Luiz Quagliato concerning the accusation put

189 Regional Labor Delegation of Pará Report (evidence file, pages 9573 and 9574).
190 Cf. Statement of Marcos Antônio Lima, received during in situ proceedings on June 6, 2016; statement of Francisco Fabiano Leandro, received during in situ proceedings on June 6, 2016; statement of Rogerio Félix da Silva, received during in situ proceedings on June 6, 2016; statement of Francisco das Chagas Bastos Souza, received during in situ proceedings on June 6, 2016, page 1038); statement of Antônio Fernandes da Costa, given before a notary public on May 8, 2015 (evidence file, page 7566); statement of Francisco de Assis Félix, given before a notary public on May 8, 2015 (evidence file, page 7573), and March 31, 2000 labor inspection report on Hacienda Brasil Verde (evidence file, pages 9573 to 9575).
191 Regional Labor Delegation of Pará Report (evidence file, page 9573).
192 Regional Labor Delegation of Pará Report (evidence file, pages 9574).
193 Public civil action, May 30, 2000 (evidence file, page 1049).
194 Public civil action, May 30, 2000 (evidence file, page 1049).
195 Public civil action, May 30, 2000 (evidence file, page 1052).
196 Public civil action, May 30, 2000 (evidence file, page 1053).

forward by the Public Prosecutor's office.[197] On July 20, 2000, said hearing took place, in which João Luiz Quagliato promised to:

> not allow his employees to work in a system of slavery, on penalty of a 10,000 UFIR fine per worker found in such a situation, black or white; provide accommodation, installation of proper bathrooms, potable water, decent lodging, [...] under penalty of 500 UFIR fine per infraction [...] not ask for signatures of employees on any kind of blank document, under penalty of a 100 UFIR fine per document found in said condition.[198]

182. On August 14, 2000, the Labor Prosecutor's office asked the Regional Labor Delegation of Pará to find out if the terms of the legal agreement described above were being duly met by Quagliato Neto.[199] On August 18, 2000, the procedure was closed.[200]

183. On June 21, 2001, the Labor Prosecutor's office sent an extensive report to the Assistant Attorney General of the Republic detailing the procedures put in place by said agency in relation to the businesses belonging to the Grupo Quagliato, among them the Hacienda Brasil Verde.[201]

184. From May 12 to 18, 2002, the Ministry of Labor carried out new inspection audits in the regions of Xinguara, Curionópolis and Sapucaia, with the goal of verifying compliance with agreements reached between the Labor Prosecutor's office and various rural employers.[202] This series of audits included a site visit to Hacienda Brasil Verde.[203] After the audit it was concluded that the employers were complying with their commitments,[204] and as a result of the commitments agreed upon, the farm managers at the behest of their employer had eliminated the physical and economic dependence of the workers on the *gatos*, which was the cause of the exploitation of forced manual labor and labor analogous to slavery.[205]

B.5. Criminal Proceeding Regarding the 2000 Inspection

185. In 2000, after the audit at Hacienda Brasil Verde, the Federal Public Prosecutor presented criminal charge No. 0472001 before the Federal Judge of Marabá, in Pará. The federal judiciary declined state judiciary's jurisdiction on July 11, 2001. The State informed the Court that no information existed about what might have happened in said process and that it had not been able to find a copy of the investigative report[206]. Therefore, the Court has no information regarding this criminal proceeding or its content, other than the fact that the petition was filed by the Public Prosecutor and it refers to facts in the audit from April 2000 at Hacienda Brasil Verde.

[197] Notifications from June 9, 2000 (evidence file, pages 5787 and 5788).
[198] Hearing agreement on July 20, 2000 (evidence file, page 5794).
[199] Document No. 2.357/2001, June 21, 2001 (evidence file, page 1033).
[200] Document No. 2.357/2001, June 21, 2001 (evidence file, page 1033).
[201] Document No. 2.357/2001, June 21, 2001 (evidence file, page 1031).
[202] June 2002 inspection report (evidence file, page 1056).
[203] June 2002 inspection report (evidence file, page 1056).
[204] June 2002 inspection report (evidence file, page 1062).
[205] June 2002 inspection report (evidence file, page 1063).
[206] June 27, 2016 State brief (evidence file, page 1698).

B.6. Current situation of Iron Canuto da Silva and Luis Ferreira da Cruz

186. On October 29, 2007, the director of the Federal Police asked the CPT to send them a copy of the claim filed about the disappearance of Iron Canuto da Silva and Luis Ferreira da Cruz so that it could support the investigation into said facts.[207] In July 2007 and February 2009 the State Secretary of Justice and Human Rights of Pará interviewed family members of Iron Canuto da Silva and Luis Ferreira da Cruz to obtain information about their whereabouts.[208]

187. Iron Canuto da Silva's girlfriend stated that she had lived with him for 13 years and they had four children; they had lived together in Arapoema, in the state of Tocantins, in 1994 and subsequently in Redenção and Floresta de Araguaia, Pará, between 1999 and 2007.[209] Iron Canuto da Silva's mother and girlfriend stated that on July 22, 2007 he had died in circumstances not related to the present case.[210]

188. Regarding Luis Ferreira da Cruz, on February 17, 2009, his foster mother declared before the Secretary of Justice and Human Rights of Pará that "she did not know where he was."[211] Subsequently, in August of 2015, she told the Federal Police that Luis had died "approximately ten years earlier in a confrontation with the police.[212] Luis Ferreira da Cruz's stepsister also stated that he had died ten years earlier and "because he had no identification on him at the time he was murdered, [...] he was buried as an indigent.[213]

VII. RULING REGARDING ALLEGED VICTIMS

189. In this chapter the Court will make a preliminary ruling on the people considered to be alleged victims in the present case, detailing the evidence and the reasons for counting them as such. Without prejudice to what was noted in the jurisdiction *ratione temporis* of the present case (*supra* paras. 63 to 65), the Court will rule on alleged violations founded in the facts that occurred on or persisted past December 10, 1998. In this way, in addition to the alleged forced disappearance of Luis Ferreira da Cruz and Iron Canuto da Silva, in the present Judgment the Court will examine the alleged violations related to facts that took place on or continued past the date indicated previously, which is to say: i) the investigation and processes initiated as a consequence of the inspection made in April 1997 at Hacienda Brasil Verde, and ii) the inspection carried out in March 2000 at Hacienda Brasil Verde, and the respective investigation initiated subsequently.

[207] Document No. 1254/2007, October 29, 2007 (evidence file, page 1009).
[208] Statement of Maria do Socorro Canuto, February 17, 2009 (evidence file, page 7442) and statement of Raimunda Marcia Azevedo da Silva, July 22, 2007 (evidence file, page 7445).
[209] Statement of Raimunda Marcia Azevedo da Silva, July 22, 2007 (evidence file, page 7445).
[210] Statement of Maria do Socorro Canuto, February 17, 2009 (evidence file, page 7442) and statement of Raimunda Marcia Azevedo da Silva, July 22, 2007 (evidence file, page 7445). Forensic medical examination of Iron Canuto da Silva (evidence file, pages 7451 and 7452).
[211] Statement of Maria do Socorro Canuto, February 17, 2009 (evidence file, page 7442).
[212] Federal Police Report No. 3/2015, August 4, 2015 (evidence file, page 10766).
[213] Federal Police Report No. 3/2015, August 4, 2015 (evidence file, page 10766).

190. Nevertheless, before beginning an analysis of the background of the present Judgment, the Court considers it necessary to make some preliminary observations to establish with clarity which alleged victims will be taken into consideration in the present case, who have relation to the facts of the case within the jurisdiction *ratione temporis*. First, the Court states that the lists of alleged victims brought forth by the parties and the Commission present multiple differences in the identification of the workers found to be lending their services at the Hacienda Brasil Verde at the time of the inspection audits in April 1997 and March 2000.

191. In that respect, the Court considers it evident that the present case has a collective character and that, in addition to a large number of alleged victims, there is a clear difficulty in identifying and locating these individuals subsequent to the referenced inspections. Taking that into account, the Tribunal concludes that in the concrete case the exceptional circumstance contemplated in Article 35(2) of the Rules of the Court is applicable. Consequently, it will proceed to determine which individuals were found to be lending their services at Hacienda Brasil Verde when the audits in 1997 and 2000 took place.

A. April 1997 Audit

A.1. Arguments of the Parties and the Commission

192. The **Commission** noted in its Background Report that at the time of the 1997 audit there were 81 workers found at the Hacienda Brasil Verde, however only 59 of them were able to be identified. It also indicated that 12 of the workers had been identified through informal means of debts acquired by the workers with the employer, and that several times the workers appeared on record without last names, with nicknames or with illegible names; which accounts for the Commission's lack of sufficient information to determine if some workers had been previously identified.

193. For their part, the **representatives** agreed with the Commission in that at the time of the April 1997 audit there were 81 workers at the Hacienda Brasil Verde, however, they added that according to the audit report 12 more workers had escaped before the Ministry of Labor and the Federal Police showed up at the Hacienda Brasil Verde, bringing the total to 92 alleged victims. Even so, in their list of alleged victims the representatives noted the names of 96 workers, clarifying that 39 of the names had been obtained from informal paperwork regarding food consumption or blank receipts.

194. In contrast, the **State** argued that it was necessary to distinguish the total of "workers found" from the total of "workers rescued" by the Ministry of Labor and the Federal Police. In this way, if indeed the audit report listed 81 workers at the Hacienda Brasil Verde, only 36 workers were rescued, which meant that only they were in a real situation of danger against their physical integrity, in the interest of considering them alleged victims in the present case. Consequently, the State protested that as for the remaining 45 people reported there was nothing known about them that proved they had been victims of violations spelled out in the American Convention.

A.2. The Court's Findings

195. The Court verified that the paperwork regarding food consumption and blank receipts where workers' debts were recorded at Hacienda Brasil Verde were handwritten informal records, in which there was no evidence of the worker's full name and sometimes only their first names were written down. As an example, some of the names of alleged victims were presented based on the notes about food consumption or blank receipts and they looked like this: Antônio "Caititu," Antônio "Capixaba," Irineu, José Carlos, José Francisco, Francisco, "Índio," "Mato Grosso," "Pará" and "Parazinho."

196. With that in mind, the Court considers there to be reasonable doubt that a name written down on a note about food consumption or on a blank receipt could refer to a worker that had been previously identified with another sort of document, or even to a worker who was not at the Hacienda Brasil Verde at the time of the April 1997 audit. Therefore the Court considers, for the purposes of the present case, that notes about food consumption or blank receipts do not demonstrate with certainty the presence of a given worker on the Hacienda Brasil Verde at the time of the April 1997 audit, nor the consequent status of an alleged victim.

197. Without prejudice to the above, the Court deems it pertinent to express that the identification of a worker as an alleged victim of alleged violations of the Convention does not derive exclusively from an eventual rescue by the Ministry of Labor or the Federal Police, but rather from conditions in which he was found during the time he lent his services to the farm, as well as from the consequent investigations carried out in their respect; independently of whether he was rescued during the inspection. Because of the above, the Court dismisses the State's argument concerning the only alleged victims being those workers rescued by state agents at the Hacienda Brasil Verde.

198. However, taking into consideration that in order for the Court to consider the present case it must be minimally certain of the existence of said persons,[214] and in order to demonstrate the existence of alleged victims the Court used the following evidentiary instruments provided by the following sources: i) Violation Register (VR); ii) Farm's Employee Register (ER); iii) Contract Termination (CT); iv) Physical Verification Form (VF), and v) List of workers provided by the defense for the manager and *gato* in the domestic criminal proceedings (CP). Analysis of said documents showed that: a) 26 people[215] were exhibited as alleged victims based exclusively on notes about food consumption and blank receipts; b) 10

[214] *Cf. Masacres de El Mozote y lugares aledaños*, para. 54.

[215] Namely: 1. João Luiz "illegible" (or Mendonça); 2. Raimundo; 3. Antônio Pereira; 4. Hilario dos SS; 5. Claudio Peres "illegible"; 6. Raimundo A. P. Moura; 7. José Fernandes Silva; 8. Carlos Pereira Silva; 9. Francisco "illegible" (or Rodrigues) Souza; 10. Antônio Ribeiro; 11. Antônio "illegible" (or P.) Silva; 12. Angelo Marcio A. Silva; 13. Antônio "Caititu"; 14. Antônio "Capixaba;" 15. Benedito Ferreira; 16. Claudeci Nunes; 17. Cosme (or Cosmi) Rodrigues; 18. Domingos Mendes; 19. Edilson Fernandes; 20. José da Costa Oliveira; 21. Osnar (or Osmar) Ribeiro; 22. Virma Firmino di Paulo; 23. "illegible" Francisco; 24. "Índio;" 25. "Mato Grosso," and 26. "Pará."

people[216] had no kind of proof to demonstrate their standing as an alleged victim, and c) 14 people[217] referred to workers previously identified.

199. Therefore, of the group of workers present at the Hacienda Brasil Verde during the April 1997 audit, at the moment of the issuance of the present Judgment, the Tribunal relies on evidentiary elements that are sufficient and reliable to meet the standards of alleged victims of the alleged violations of the rights to the guarantees of legal protection of the following 43 workers: 1. Antônio Alves de Souza;[218] 2. Antônio Bispo dos Santos;[219] Antônio da Silva Nascimento;[220] 4. Antônio Pereira da Silva;[221] 5. Antônio Renato Barros;[222] 6. Benign Rodrigues da Silva;[223] 7. Carlos Alberto Albino da Conceição;[224] 8. Casimiro Neto Souza Maia;[225] 9. Djalma Santos Batista;[226] 10. Edi Souza de Silva;[227]11. Edmilson Fernandes dos Santos;[228] 12. Edson Pocidônio da Silva;[229] 13. Irineu Inácio da Silva;[230] 14. Geraldo Hilário de Almeida;[231] 15. João de Deus dos Reis Salvino;[232] 16. João Germano da Silva;[233] 17. João Pereira

[216] Namely: 1. José Cano; 2. Francisco das Chagas Marques de Souza; 3. Carlos da Silva; 4. Dovalino (or Davalino) Barbosa; 5. Edivaldo dos Santos; 6. João Monteiro; 7. Juarez Silva; 8. Luiz Barbosa; 9. Valdir Alves; 10. "Parazinho."
[217] Namely: 1. Antônio Alves in connection with Antônio Alves de Souza; 2. Antônio Renato in connection with Antônio Renato Barros; 3. Dijalma Santos in connection with Dijalma Santos Batista; 4. Irineu in connection with Irineu Inácio da Silva; 5. João Germano in connection with João Germano da Silva; 6. João Pereira in connection with João Pereira Marinho; 7. Joaquim Francisco in connection with Joaquim Francisco Xavier; 8. José Carlos in connection with José Carlos Alves dos Santos; 9. José Francisco in connection with José Francisco de Lima; 10. Manoel Alves in connection with Manoel Alves de Oliveira; 11. Pedro P. Andrade in connection with Pedro Pereira de Andrade; 12. Raimundo Gonçalves in connection with Raimundo Gonçalves Lima; 13. Raimundo Nonato in connection with Raimundo Nonato da Silva, 14. Sebastião Rodrigues in connection with Sebastião Rodrigues da Silva.
[218] *Cf.* VR (evidence file, page 1255); ER (evidence file, page 1752); CT (evidence file, page 1753), and CP (evidence file, page 600).
[219] *Cf.* VR (evidence file, page 1257); ER (evidence file, page 1756); CT (evidence file, page 1757), and CP (evidence file, page 600).
[220] *Cf.* VR (evidence file, page 1257); ER (evidence file, page 1754); CT (evidence file, page 1755), and CP (evidence file, page 600).
[221] *Cf.* VR (evidence file, page 1254); VF (evidence file, page 1226); ER (evidence file, page 1758); CT (evidence file, page 1759), and CP (evidence file, page 600).
[222] *Cf.* VR (evidence file, page 1255); ER (evidence file, page 1760); CT (evidence file, page 1761), and CP (evidence file, page 600).
[223] *Cf.* ER (evidence file, page 1738) and CP (evidence file, page 600).
[224] *Cf.* VR (evidence file, page 1256); ER (evidence file, page 1762); CT (evidence file, page 1763), and CP (evidence file, page 600).
[225] *Cf.* VR (evidence file, page 1257); ER (evidence file, page 1764); CT (evidence file, page 1765), and CP (evidence file, page 600).
[226] *Cf.* VR (evidence file, page 1257); ER (evidence file, page 1766); CT (evidence file, page 1767), and CP (evidence file, page 600).
[227] *Cf.* VR (evidence file, page 1254).
[228] *Cf.* VR (evidence file, page 1257); ER (evidence file, page 1768); CT (evidence file, page 1769), and CP (evidence file, page 600).
[229] Also known as Edson Possidonio. Cf. VR (evidence file, page 1255); ER (evidence file, page 1770); CT (evidence file, page 1771), and CP (evidence file, page 600).
[230] *Cf.* VR (evidence file, page 1255).
[231] *Cf.* ER (evidence file, page 1740), and CP (evidence file, page 600).
[232] *Cf.* VR (evidence file, page 1256).
[233] *Cf.* VR (evidence file, page 1254); ER (evidence file, page 1772); CT (evidence file, page 1773), and CP (evidence file, page 600).

Marinho;[234] 18. Joaquim Francisco Xavier;[235] 19. José Astrogildo Damascena;[236] 20. José Carlos Alves dos Santos;[237] 21. José Fernando da Silva Filho;[238] 22. José Francisco de Lima;[239] 23. José Pereira da Silva;[240] 24. José Pereira Marinho;[241] 25. José Raimundo dos Santos;[242] 26. José Vital Nascimento;[243] 27. Luiz Leal dos Santos;[244] 28. Manoel Alves de Oliveira;[245] 29. Manoel Fernandes dos Santos;[246] 30. Marcionilo Pinto de Morais;[247] 31. Pedro Pereira de Andrade;[248] 32. Raimundo Costa Neves;[249] 33. Raimundo Nonato Amaro Ferreira;[250] 34. Raimundo Gonçalves Lima;[251] 35. Raimundo Nonato da Silva;[252] 36. Roberto Aires;[253] 37. Ronaldo Alves Ribeiro;[254] 38. Sebastião Carro Pereira dos Santos;[255]

234 *Cf.* VF (evidence file, page 1230); ER (evidence file, page 1742); CT (evidence file, page 1743), and CP (evidence file, page 600).
235 *Cf.* VR (evidence file, page 1257); ER (evidence file, page 1774); CT (evidence file, page 1775), and CP (evidence file, page 600).
236 *Cf.* VR (evidence file, page 1257); ER (evidence file, page 1776); CT (evidence file, page 1777), and CP (evidence file, page 600).
237 *Cf.* VR (evidence file, page 1256); ER (evidence file, page 1778); CT (evidence file, page 1779), and CP (evidence file, page 600).
238 *Cf.* VR (evidence file, page 1254).
239 *Cf.* VR (evidence file, page 1254); ER (evidence file, page 1780); CT (evidence file, page 1781), and CP (evidence file, page 600).
240 *Cf.* VR (evidence file, page 1255); ER (evidence file, page 1782); CT (evidence file, page 1783), and CP (evidence file, page 600).
241 *Cf.* VR (evidence file, page 1256); ER (evidence file, page 1784); CT (evidence file, page 1785), and CP (evidence file, page 600).
242 *Cf.* VR (evidence file, page 1255); ER (evidence file, page 1786); CT (evidence file, page 1787), and CP (evidence file, page 600).
243 *Cf.* VR (evidence file, page 1254); ER (evidence file, page 1791); CT (evidence file, page 1790), and CP (evidence file, page 600).
244 *Cf.* VR (evidence file, page 1255); ER (evidence file, page 1792); CT (evidence file, page 1793), and CP (evidence file, page 600).
245 *Cf.* VR (evidence file, page 1256); ER (evidence file, page 1788); CT (evidence file, page 1789), and CP (evidence file, page 600).
246 Also known as Manuel Fernandes dos Santos. Cf. VR (evidence file, page 1744); CT (evidence file, page 1745), and CP (evidence file, page 600).
247 *Cf.* VR (evidence file, page 1254); ER (evidence file, page 1794); CT (evidence file, page 1795), and CP (evidence file, page 600).
248 *Cf.* VR (evidence file, page 1257); VF (evidence file, page 1231); ER (evidence file, page 1796); CT (evidence file, page 1797), and CP (evidence file, page 600).
249 *Cf.* VR (evidence file, page 1256).
250 Also known as Raimundo Amaro Ferreira. *Cf.* VR (evidence file, page 1746); CT (evidence file, page 1747), and CP (evidence file, page 600).
251 *Cf.* VR (evidence file, page 1255); ER (evidence file, page 1798); CT (evidence file, page 1799), and CP (evidence file, page 600).
252 *Cf.* VR (evidence file, page 1255); ER (evidence file, page 1800); CT (evidence file, page 1801), and CP (evidence file, page 600).
253 *Cf.* VR (evidence file, page 1258); ER (evidence file, page 1802); CT (evidence file, page 1803), and CP (evidence file, page 601).
254 *Cf.* VR (evidence file, page 1254); ER (evidence file, page 1804); CT (evidence file, page 1805), and CP (evidence file, page 601).
255 *Cf.* VR (evidence file, page 1254).

39. Sebastião Rodrigues da Silva;[256] 40. Sinoca da Silva;[257] 41. Valdemar de Souza;[258] 42. Valdinar Veloso Silva,[259] and 43. Zeno Gomes Feitosa.[260]

B. March 2000 Audit

B.1. Arguments of the Parties and the Commission

200. The **Commission** noted in its Background Report that at the time of the March 2000 audit there were 82 workers found at the Hacienda Brasil Verde. According to the Commission, said names came from the audit report carried out by the Labor Prosecutor's office, from the list provided by the defense of the owner in the domestic legal proceedings and from the list provided by the petitioners on 10 July 2007, in the procedure before the Commission.

201. The **representatives** alleged that 85 workers were found in the audit, based on the audit report made by the Labor Prosecutor's office and the Public Civil Action of May 30, 2000, presented by the Labor Prosecutor's office before the Labor Court of Conceição do Araguaia. They also pointed out that the names indicated by the Commission regarding Francisco das Chagas S. Lira and Francisco das Chagas da Silva Lima, actually refer to the same person, whose name is Francisco das Chagas da Silva Lira, and that the name Francisco das Chagas Da Silva Lima must be substituted for Francisco Mariano da Silva.

202. In contrast, the **State** argued that of the 81 workers listed in the report from the March 2000 audit, 49 were contracted by the Hacienda Brasil Verde and 32 by the Hacienda San Carlos. Therefore the State considered that the only alleged victims that could be considered with respect to the March 2000 audit would be the 49 people who worked on the Hacienda Brasil Verde.

B.2. The Court's Findings

203. The Court verified that the Hacienda Brasil Verde and the Hacienda San Carlos were contiguous and were both a part of the Quagliato Group, which was the property of João Luiz Quagliato Neto. Thus if in the present case reference is made in general terms to the workers at Hacienda Brasil Verde, the Court confirmed that the worker identification cards of some of the alleged victims indicated that they had been contracted by the Hacienda San Carlos, in spite of them having been recruited to work at the Hacienda Brasil Verde. Also, in some cases the contractual labor documentation of the workers rescued in the March 2000 audit mentioned both farms, which reinforces the idea that they constituted, in practice, a single rural property where this case's alleged victims labored. With that in mind, the Court dismisses the

256 *Cf.* CT (evidence file, page 1749) and CP (evidence file, page 601).
257 *Cf.* CT (evidence file, page 1751) and CP (evidence file, page 601).
258 *Cf.* VR (evidence file, page 1256); ER (evidence file, page 1806); CT (evidence file, page 1807), and CP (evidence file, page 601).
259 Also known as Valdiná Veloso Silva. *Cf.* VR (evidence file, page 1257); VF (evidence file, page 1228); ER (evidence file, page 1808); CT (evidence file, page 1809), and CP (evidence file, page 601).
260 Also known as Zeno Gomes Feitoza. *Cf.* VR (evidence file, page 1256); VF (evidence file, page 1227); ER (evidence file, page 1810); CT (evidence file, page 1811), and CP (evidence file, page 601).

argument put forward by the State, and considers it appropriate to make this clarification regarding the connection between both farms, without prejudice to the fact that henceforth reference will be made principally and in general terms to the workers at Hacienda Brasil Verde.[261]

204. The Court also confirms that the three additional people on the Commission's list singled out by the representatives were: 1. Antônio Pereira dos Santos; 2. Francisco das Chagas Bastos Souza, and 3. Francisco Pereira da Silva. The Tribunal also observed that the State did not refer to the following workers named by the Commission and the representatives: 1. Antônio Francisco da Silva Fernandes; 2. Francisco das Chagas Rodrigues de Sousa; 3. Gonçalo Luiz Furtado, and 4. Paulo Pereira dos Santos.

205. In the same way that it indicated references in the preceding paragraphs, taking into consideration that in order to resolve the present case the Court must establish a minimum of certainty concerning the existence of said people,[262] and demonstrate their standing as alleged victims, the Court used the following evidentiary instruments provided by the parties: i) Violation Register (VR); ii) Farm's Employee Register (ER); iii) Contract Termination (CT); iv) Physical Verification Form (VF), and v) List of workers provided by the defense for the manager and *gato* in the domestic criminal proceedings (CP).

206. Therefore, of the workers present at Hacienda Brasil Verde during the March 2000 audit, to the moment of the issuance of the present Judgment, the Tribunal relies on evidentiary elements that are sufficient and reliable to meet the standards of alleged victims of the alleged violations of the prohibition against being subjugated to slavery, forced labor, involuntary servitude or slave trafficking and of the guarantees of legal protection of the following 85 workers: 1. Alcione Freitas Sousa;[263] 2. Alfredo Rodrigues;[264] 3. Antônio Almir Lima da Silva;[265] 4. Antônio Aroldo Rodrigues Santos;[266] 5. Antônio Bento da Silva;[267] 6. Antônio da Silva Martins;[268] 7. Antônio Damas Filho;[269] 8. Antônio de Paula

[261] *Cf.* March 31, 2000 Report on the audit at Hacienda Brasil Verde (evidence file, pages 9571 and 9573); October 20, 1999 Report on the audit at Hacienda Brasil Verde (evidence file, page 7546); statement from Francisco Fabiano Leandro, received during in situ diligence on June 6, 2016; statement from Francisco das Chagas Bastos Souza, received during in situ diligence on June 6, 2016, and statement from Antônio Francisco da Silva, received during in situ diligence on June 6, 2016.
[262] *Cf. Masacres de El Mozote y lugares aledaños*, para. 54.
[263] *Cf.* VR (evidence file, page 9615); ER (evidence file, page 607); CT (evidence file, page 608), and CP (evidence file, page 602).
[264] *Cf.* VR (evidence file, page 9615); ER (evidence file, page 609); CT (evidence file, page 610), and CP (evidence file, page 602).
[265] *Cf.* VR (evidence file, page 9615); ER (evidence file, page 611); CT (evidence file, page 612), and CP (evidence file, page 602).
[266] *Cf.* VR (evidence file, page 9615); ER (evidence file, page 613); CT (629), and CP (evidence file, page 602).
[267] Cf. VR (evidence file, page 9616); ER (evidence file, page 614); CT (evidence file, page 615), and CP (evidence file, page 602).
[268] *Cf.* VR (evidence file, page 9616); ER (evidence file, page 616); CT (evidence file, page 617), and CP (evidence file, page 602).
[269] *Cf.* VR (evidence file, page 9616); ER (evidence file, page 630); CT (evidence file, page 631), and CP (evidence file, page 602).

Rodrigues de Sousa;[270] 9. Antônio Edvaldo da Silva;[271] 10. Antônio Fernandes Costa;[272] 11. Antônio Francisco da Silva;[273] 12. Antônio Francisco da Silva Fernandes;[274] 13. Antônio Ivaldo Rodrigues da Silva;[275] 14. Antônio Paulo da Silva;[276] 15. Antônio Pereira da Silva;[277] 16. Antônio Pereira dos Santos;[278] 17. Carlito Bastos Gonçalves;[279] 18. Carlos Alberto Silva Alves;[280] 19. Carlos André da Conceição Pereira;[281] 20. Carlos Augusto Cunha;[282] 21. Carlos Ferreira Lopes;[283] 22. Edirceu Lima de Brito;[284] 23. Erimar Lima da Silva;[285] 24. Firmino da Silva;[286] 25. Francisco Antônio Oliveira Barbosa;[287] 26. Francisco da Silva;[288] 27. Francisco das Chagas Araujo Carvalho;[289] 28. Francisco das Chagas Bastos Souza;[290] 29. Francisco das Chagas Cardoso Carvalho;[291] 30. Francisco das Chagas Costa Rabelo;[292] 31. Francisco das Chagas da Silva Lira;[293] 32. Francisco Mariano da Silva;[294] 33. Francisco das Chagas

[270] Also known as Antônio de Paula Rodrigues de Souza. *Cf.* VR (evidence file, page 9615); ER (evidence file, page 644); CT (evidence file, page 647), and CP (evidence file, page 602).
[271] Cf. VR (evidence file, page 9616); ER (evidence file, page 634); CT (evidence file, page 635) and CP (evidence file, page 602).
[272] *Cf.* VR (evidence file, page 9615); ER (evidence file, page 636); CT (evidence file, page 637), and CP (evidence file, page 602).
[273] *Cf.* VR (evidence file, page 9615); ER (evidence file, page 638); CT (evidence file, page 639), and CP (evidence file, page 602).
[274] Also known as Antônio Francisco da S. Fernandes. *Cf.* ER (evidence file, page 640); CT (evidence file, page 641), and CP (evidence file, page 602).
[275] *Cf.* VR (evidence file, page 9615); ER (evidence file, page 642), and CP (evidence file, page 602).
[276] *Cf.* VR (evidence file, page 9615); ER (evidence file, page 632); CT (evidence file, page 633), and CP (evidence file, page 603).
[277] *Cf.* VR (evidence file, page 9616); ER (evidence file, page 648); CT (evidence file, page 665), and CP (evidence file, page 603).
[278] *Cf.* VR (evidence file, page 9616).
[279] *Cf.* VR (evidence file, page 9615); ER (evidence file, page 666); CT (evidence file, page 667), and CP (evidence file, page 603).
[280] *Cf.* VR (evidence file, page 9616); ER (evidence file, page 668); CT (evidence file, page 669), and CP (evidence file, page 603).
[281] Also known as Carlos André da C. Pereira. *Cf.* VR (evidence file, page 9615); ER (evidence file, page 670); CT (evidence file, page 671), and CP (evidence file, page 603).
[282] *Cf.* VR (evidence file, page 9616); ER (evidence file, page 672); CT (evidence file, page 673), and CP (evidence file, page 603).
[283] *Cf.* VR (evidence file, page 9616); ER (evidence file, page 674); CT (evidence file, page 675), and CP (evidence file, page 603).
[284] *Cf.* VR (evidence file, page 9615); ER (evidence file, page 676); CT (evidence file, page 677), and CP (evidence file, page 603).
[285] *Cf.* VR (evidence file, page 9615); ER (evidence file, page 678); CT (evidence file, page 679), and CP (evidence file, page 603).
[286] *Cf.* VR (evidence file, page 9616); ER (evidence file, page 680); CT (evidence file, page 681), and CP (evidence file, page 603).
[287] *Cf.* VR (evidence file, page 9616); ER (evidence file, page 682); CT (evidence file, page 683), and CP (evidence file, page 603).
[288] *Cf.* VR (evidence file, page 9615); ER (evidence file, page 684); CT (evidence file, page 685), and CP (evidence file, page 603).
[289] Also known as Francisco das Chagas A. Carvalho. *Cf.* VR (evidence file, page 9616); ER (evidence file, page 686); CT (evidence file, page 687), and CP (evidence file, page 603).
[290] *Cf.* VR (evidence file, page 9616) and VF (9656).
[291] Also known as Francisco das Chagas C. Carvalho. *Cf.* VR (evidence file, page 9616); ER (evidence file, page 688); CT (evidence file, page 689), and CP (evidence file, page 603).
[292] Also known as Francisco das Chagas C. Rabelo. *Cf.* VR (evidence file, page 9616); ER (evidence file, page 690); CT (evidence file, page 691), and CP (evidence file, page 603).
[293] Also known as Francisco das Chagas da S. Lira and Francisco das Chagas da Silva Lima. *Cf.* VR (evidence file, page 9616); ER (evidence file, page 692), and CP (evidence file, page 603).
[294] *Cf.* VR (evidence file, page 9616); ER (evidence file, page 720); CT (evidence file, page 721), and CP (evidence file, page 603).

Diogo;[295] 34. Francisco das Chagas Moreira Alves;[296] 35. Francisco das Chagas Rodrigues de Sousa;[297] 36. Francisco das Chagas Sousa Cardoso;[298] 37. Francisco de Assis Felix;[299] 38. Francisco de Assis Pereira da Silva;[300] 39. Francisco de Souza Brígido;[301] 40. Francisco Ernesto de Melo;[302] 41. Francisco Fabiano Leandro;[303] 42. Francisco Ferreira da Silva;[304] 43. Francisco Ferreira da Silva Filho;[305] 44. Francisco José Furtado;[306] 45. Francisco Junior da Silva;[307] 46. Francisco Mirele Ribeiro da Silva;[308] 47. Francisco Pereira da Silva;[309] 48. Francisco Soares da Silva;[310] 49. Francisco Teodoro Diogo;[311] 50. Geraldo Ferreira da Silva;[312] 51. Gonçalo Constâncio da Silva;[313] 52. Gonçalo Firmino de Sousa;[314] 53. Gonçalo José Gomes;[315] 54. Gonçalo Luiz Furtado;[316] 55. Jenival Lopes;[317] 56. João Diogo Pereira

[295] *Cf.* VR (evidence file, page 9615); ER (evidence file, page 694); CT (evidence file, page 695), and CP (evidence file, page 603).
[296] Also known as Francisco das Chagas M. Alves. *Cf.* VR (evidence file, page 9615); ER (evidence file, page 696); CT (evidence file, page 697), and CP (evidence file, page 603).
[297] Also known as Francisco das Chagas R. de Sousa. *Cf.* ER (evidence file, page 698); CT (evidence file, page 699), and CP (evidence file, page 603).
[298] Also known as Francisco das Chagas S. Cardoso. *Cf.* VR (evidence file, page 9615); ER (evidence file, page 700); CT (evidence file, page 701), and CP (evidence file, page 603).
[299] *Cf.* VR (evidence file, page 9615); ER (evidence file, page 702); CT (evidence file, page 703), and CP (evidence file, page 603).
[300] *Cf.* VR (evidence file, page 9615); ER (evidence file, page 704); CT (evidence file, page 705), and CP (evidence file, page 603).
[301] Also known as Francisco de Sousa Brígido. *Cf.* VR (evidence file, page 9615); ER (evidence file, page 706); CT (evidence file, page 707), and CP (evidence file, page 603).
[302] *Cf.* VR (evidence file, page 9616); ER (evidence file, page 708), and CP (evidence file, page 603).
[303] *Cf.* VR (evidence file, page 9616); ER (evidence file, page 710), and CP (evidence file, page 603).
[304] *Cf.* VR (evidence file, page 9616); ER (evidence file, page 712); CT (evidence file, page 713), and CP (evidence file, page 603).
[305] *Cf.* VR (evidence file, page 9615); ER (evidence file, page 714); CT (evidence file, page 715), and CP (evidence file, page 603).
[306] *Cf.* VR (evidence file, page 9615); ER (evidence file, page 716); CT (evidence file, page 717), and CP (evidence file, page 603).
[307] *Cf.* VR (evidence file, page 9616); ER (evidence file, page 718); CT (evidence file, page 719), and CP (evidence file, page 603).
[308] *Cf.* VR (evidence file, page 9615); ER (evidence file, page 722); CT (evidence file, page 723), and CP (evidence file, page 603).
[309] *Cf.* VR (evidence file, page 9616), and VF (f. 9699).
[310] *Cf.* VR (evidence file, page 9616); ER (evidence file, page 724); CT (evidence file, page 725), and CP (evidence file, page 603).
[311] *Cf.* VR (evidence file, page 9615); ER (evidence file, page 726); CT (evidence file, page 727), and CP (evidence file, page 603).
[312] *Cf.* VR (evidence file, page 9616); ER (evidence file, page 728); CT (evidence file, page 729), and CP (evidence file, page 603).
[313] *Cf.* VR (evidence file, page 9615); ER (evidence file, page 730); CT (evidence file, page 731), and CP (evidence file, page 603).
[314] Also known as Gonçalo Firmino de Souza. *Cf.* VR (evidence file, page 9616); ER (evidence file, page 732); CT (evidence file, page 733), and CP (evidence file, page 603).
[315] *Cf.* VR (evidence file, page 9616); ER (evidence file, page 734); CT (evidence file, page 735), and CP (evidence file, page 603).
[316] *Cf.* ER (evidence file, page 736); CT (evidence file, page 737), and CP (evidence file, page 603).
[317] Also known as Genival Lopes. *Cf.* VR (evidence file, page 9615); ER (evidence file, page 738); CT (evidence file, page 739), and CP (evidence file, page 603).

Filho;[318] 57. José Cordeiro Ramos;[319] 58. José de Deus de Jesus Sousa;[320] 59. José de Ribamar Souza;[321] 60. José do Egito Santos;[322] 61. José Gomes;[323] 62. José Leandro da Silva;[324] 63. José Renato do Nascimento Costa;[325] 64. Juni Carlos da Silva;[326] 65. Lourival da Silva Santos;[327] 66. Luis Carlos da Silva Santos;[328] 67. Luiz Gonzaga Silva Pires;[329] 68. Luiz Sicinato de Menezes;[330] 69. Manoel do Nascimento;[331] 70. Manoel do Nascimento da Silva;[332] 71. Manoel Pinheiro Brito;[333] 72. Marcio França da Costa Silva;[334] 73. Marcos Antônio Lima;[335] 74. Paulo Pereira dos Santos;[336] 75. Pedro Fernandes da Silva;[337] 76. Raimundo Cardoso Macêdo;[338] 77. Raimundo de Andrade;[339] 78. Raimundo de Sousa Leandro;[340] 79. Raimundo Nonato da Silva;[341] 80. Roberto Alves Nascimento;[342] 81. Rogerio Felix

[318] *Cf.* VR (evidence file, page 9615); ER (evidence file, page 740); CT (evidence file, page 741), and CP (evidence file, page 603).
[319] *Cf.* VR (evidence file, page 9615); ER (evidence file, page 742); CT (evidence file, page 743), and CP (evidence file, page 603).
[320] Also known as José de Deus de Jesus Souza. *Cf.* VR (evidence file, page 9616); ER (evidence file, page 744); CT (evidence file, page 745), and CP (evidence file, page 603).
[321] Also known as José de Ribamar Sousa. *Cf.* VR (evidence file, page 9615); ER (evidence file, page 746); CT (evidence file, page 747), and CP (evidence file, page 603).
[322] *Cf.* VR (evidence file, page 9616); ER (evidence file, page 748); CT (evidence file, page 749), and CP (evidence file, page 604).
[323] *Cf.* VR (evidence file, page 9616); ER (evidence file, page 750); CT (evidence file, page 751), and CP (evidence file, page 604).
[324] *Cf.* VR (evidence file, page 9615); ER (evidence file, page 752); CT (evidence file, page 753), and CP (evidence file, page 604).
[325] *Cf.* VR (evidence file, page 9615); ER (evidence file, page 754); CT (evidence file, page 755), and CP (evidence file, page 604).
[326] *Cf.* VR (evidence file, page 9616); ER (evidence file, page 756); CT (evidence file, page 757), and CP (evidence file, page 604).
[327] *Cf.* VR (evidence file, page 9616); ER (evidence file, page 758); CT (evidence file, page 759), and CP (evidence file, page 604).
[328] *Cf.* VR (evidence file, page 9616); ER (evidence file, page 760); CT (evidence file, page 761), and CP (evidence file, page 604).
[329] *Cf.* VR (evidence file, page 9615); ER (evidence file, page 762), and CP (evidence file, page 604).
[330] *Cf.* VR (evidence file, page 9616); ER (evidence file, page 764), and CP (evidence file, page 604).
[331] *Cf.* VR (evidence file, page 9616); ER (evidence file, page 766); CT (evidence file, page 767), and CP (evidence file, page 604).
[332] *Cf.* VR (evidence file, page 9615); ER (evidence file, page 768); CT (evidence file, page 769), and CP (evidence file, page 604).
[333] *Cf.* VR (evidence file, page 9615); ER (evidence file, page 770); CT (evidence file, page 771), and CP (evidence file, page 604).
[334] *Cf.* VR (evidence file, page 9615); ER (evidence file, page 772); CT (evidence file, page 773), and CP (evidence file, page 604).
[335] *Cf.* VR (evidence file, page 9616); ER (evidence file, page 774); CT (evidence file, page 775), and CP (evidence file, page 604).
[336] *Cf.* ER (evidence file, page 776); CT (evidence file, page 777), and CP (evidence file, page 604).
[337] *Cf.* VR (evidence file, page 9615); ER (evidence file, page 778); CT (evidence file, page 779), and CP (evidence file, page 604).
[338] *Cf.* VR (evidence file, page 9615); ER (evidence file, page 780); CT (evidence file, page 781), and CP (evidence file, page 604).
[339] *Cf.* VR (evidence file, page 9615); ER (evidence file, page 782); CT (evidence file, page 783), and CP (evidence file, page 604).
[340] *Cf.* VR (evidence file, page 9615); ER (evidence file, page 784); CT (evidence file, page 785), and CP (evidence file, page 604).
[341] *Cf.* VR (evidence file, page 9616); ER (evidence file, page 786); CT (evidence file, page 787), and CP (evidence file, page 604).
[342] *Cf.* VR (evidence file, page 9615); ER (evidence file, page 788); CT (evidence file, page 789), and CP (evidence file, page 604).

Silva;[343] 82. Sebastião Pereira de Sousa Neto;[344] 83. Silvestre Moreira de Castro Filho;[345] 84. Valdir Gonçalves da Silva,[346] and 85. Vicentina Maria da Conceição.[347]

207. In accordance with the foregoing, the Court will consider as alleged victims the individuals indicated in paragraphs 199 and 206 of this Judgment.

VIII. BACKGROUND

VIII-1
PROHIBITION OF SLAVERY, INVOLUNTARY SERVITUDE, FORCED LABOR AND TRAFFICKING OF SLAVES AND WOMEN,[348] RIGHTS TO PERSONAL INTEGRITY, PERSONAL LIBERTY, TO THE RECOGNITIONS OF LEGAL PERSONALITY, TO THE FREEDOM OF MOVEMENT AND RESIDENCE[349] AND RIGHTS OF THE CHILD[350]

208. In this chapter the Court will consider the arguments of the Commission, the representatives and the alleged victims, and of the State, regarding the alleged violations of the prohibition of slavery, involuntary servitude, human trafficking and forced labor, and of the rights to personal integrity, personal liberty, legal personality, honor and dignity, and freedom of movement and residence, as established in Articles 6, 5, 7, 3, 11 and 22 of the American Convention. Then the Court will consider the legal merits regarding: i) the reach of Article 6 of the American Convention in accordance with international human rights law and laws concerning slavery, forced work, involuntary servitude and trafficking of persons; ii) the application

[343] *Cf.* VR (evidence file, page 9615); ER (evidence file, page 790); CT (evidence file, page 791), and CP (evidence file, page 604).
[344] Also known as Sebastião Pereira de Souza or Sebastião Pereira de S. Neto. *Cf.* VR (evidence file, page 9615); RE (evidence file, page 792); CT (evidence file, page 793), and CP (evidence file, page 604).
[345] Also known as Silvestre Moreira de C. Filho. *Cf.* VR (evidence file, page 9616); ER (evidence file, page 794); CT (evidence file, page 795), and CP (evidence file, page 604).
[346] *Cf.* VR (evidence file, page 9616); ER (evidence file, page 796); CT (evidence file, page 797), and CP (evidence file, page 604).
[347] Also known as Vicentina Mariana da Conceição Silva. *Cf.* VR (evidence file, page 9616); ER (evidence file, page 798); CT (evidence file, page 799), and CP (evidence file, page 604).
[348] Article 6 of the Convention states that:
1. No one shall be subject to slavery or to involuntary servitude, which are prohibited in all their forms, as are the slave trade and traffic in women.
2. No one shall be required to perform forced or compulsory labor. This provision shall not be interpreted to mean that, in those countries in which the penalty established for certain crimes is deprivation of liberty with forced labor, the carrying out of such a sentence imposed by a competent court is prohibited. Forced labor shall not adversely affect the dignity or the physical or intellectual capacity of the prisoner.
3. For the purposes of this Article, the following do not constitute forced or compulsory labor: a) work or service normally required of a person imprisoned in execution of a sentence or formal decision passed by the competent judicial authority. Such work or service shall be carried out under the supervision and control of public authorities, and any persons performing such work or service shall not be placed at the disposal of any private party, company, or legal entity; b) military service and, in countries in which conscientious objectors are recognized, national service that the law may provide for in lieu of military service; c) service exacted in time of danger or calamity that threatens the existence or the well-being of the community: and d) work or service that forms part of normal civic obligations.
[349] The relevant portion of Article 22 of the Convention states that: Every person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law.
[350] Article 19 of the Convention states that: Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the State.

of the above referenced Article to the facts of the present case, and iii) the alleged responsibility of the State in relation to the above.

A. Arguments from the Commission and the Parties

209. The **Commission** noted that international law prohibits slavery, involuntary servitude, forced labor and other practices similar to slavery. The prohibition of slavery and analogous practices is part of customary and *jus cogens* international law. The protection against slavery is an *erga omnes* obligation and a compulsory obligation on the part of the States, emanating from international regulations on human rights. The absolute and total prohibition against the subjugation of peoples to slavery, involuntary servitude or forced labor is also enshrined in the American Convention as well as in other international instruments to which Brazil is party.

210. The Commission made some clarifications regarding concepts referred to above. It first contended that slavery, following the 1926 Convention on Slavery (hereinafter the "1926 Convention") must be understood as an exercise of the powers attaching to the right of ownership over a person. Secondly it noted that the modern concept of slavery includes debt bondage as a practice similar to slavery and therefore it is also prohibited under the American Convention. Components of debt bondage would be: i) rendering of service as a debt guarantee, that however does not contribute to its payment; ii) failure to set time limits on service; iii) failure to define the nature of services; iv) forcing people to live on the property where their service is being rendered; v) control of the movements of people; vi) existence of methods for preventing escape; vii) psychological control of people; viii) victims cannot make changes to their circumstances; ix) cruel and abusive treatment.

211. The Commission also noted that forced labor refers to services rendered under threat of punishment and rendered against the victim's will. It added that the fact of receiving some payment in return for service does not prevent them from being classified as involuntary servitude or forced labor. Lastly, the Commission contended that a great deal of similarity exists between the distinct abusive practices of forced labor, slavery, debt bondage, human trafficking[351] and labor exploitation. The interrelationship between these conducts means that the same fact can be classified under distinct concepts and that, in no case, are they mutually exclusive.

212. The Commission contended that the testimonies of the rescued workers, together with their supporting evidence,[352] lead to the conclusion that at Hacienda Brasil Verde: i) there were death threats made against workers who wanted to leave the farm; ii) workers were prevented from leaving freely; iii) there were no salaries or only paltry salaries; iv) workers had debts with the owner of the farm, and v) living conditions, sanitary conditions and food were all beneath one's dignity. From this situation the

[351] The Commission did not include trafficking of persons in its Background and Admissibility Report because the topic was not debated during the submission of the case before the Commission. However, in its final observations it noted that, the topic having been debated during the hearing of the case, it would be possible to classify some conducts as human trafficking.
[352] March 15, 2000 audit, March 31, 2000 report (evidence file, page 9571) and Civil Public Action on May 30, 2000 (evidence file, page 1049).

Commission concluded that the owner and his farm managers treated the workers as if they were their property.

213. Furthermore, the Commission noted that debt bondage existed in this case. The workers acquired substantial debts with the *gatos* and farm management through being transported, fed and other means. Given the little or lack of payment received, it was almost impossible to pay off the debt, and as long as that payoff did not occur the workers were not allowed to leave the farm. It was also considered a case of forced labor because the services were rendered under threat of violence and against the will of the workers. It noted that even though the workers agreed initially of their own free will, they did so based on falsehoods and were then unable to leave the farm once they realized what the true work conditions were.

214. The Commission contended that the Brazilian State knew about the phenomenon of slave labor within its borders long before the facts of the present case. It added that the State not only knew about the problem in general terms, but was also perfectly familiar with the situation at Hacienda Brasil Verde. The Commission noted that even though the audits from 1989 to 1997 were found to be outside the jurisdiction of the Court, they must be taken into account in terms of the context of what was happening on the farm and the State's familiarity with the situation. In the Commission's opinion, Brazil meets all the requirements of responsibility by omission, that is: i) the presence of a real and immediate threat; ii) state familiarity with said threat; iii) the special situation of individuals affected, and iv) the reasonable possibilities of prevention.

215. The Commission recognized Brazil's efforts to combat slave labor, however it pointed out that all relevant measures toward doing so date after 2003. In particular, the Commission alleged there was no evidence of Brazil having taken any measure whatsoever to prevent and protect the victims in this specific case in 1998 and 2000. It pointed out, for example: i) the lack of regular audits in spite of grave previous discoveries; ii) the insufficiency of registration, verification and data collection of evidence in the audit reports, and iii) lack of short- and medium-term consequences after the audits.

216. The Commission also noted that the facts of the present case "show evidence of de facto discrimination against a determined group of individuals who have been marginalized in the enjoyment of the rights under consideration." The Commission also observed that the State "did not adopt sufficient and effective measures to guarantee without discrimination the rights of the workers found in the 1993, 1996, 1997 and 2000 audits."

217. In conclusion, the Commission alleged that Brazil is internationally responsible for the violation of Article 6 of the American Convention, in relation to Articles 5, 7, 22 and 1(1) of the same, with respect to the workers at Hacienda Brasil Verde identified in the 2000 labor inspection report[353]. It also observed that the State has not adopted sufficient and effective means to guarantee without discrimination the rights

[353] In its Admissibility and Background Report the Commission concluded its violation with respect to the workers identified in the 1993, 1996, 1997 and 2000 labor inspections. Nevertheless, because of the temporal jurisdiction of the Court and the Commission's case brief, only the argument regarding the 2000 labor inspection will be taken into consideration.

of the referenced workers in accordance with Article 1(1) of the Convention in relation to rights recognized in Articles 5, 6, 7 and 22 of the same instrument.

218. The **representatives** noted that the prohibition of slave labor is a *jus cogens* obligation in international law and that it also has an *erga omnes* character. They added that it is not possible to enumerate all the contemporary forms of slavery, but they do include four fundamental elements: i) control over other people; ii) appropriation of their labor force; iii) use or threat of the use of violence, and iv) discrimination that entails the dehumanization of individuals subjected to slavery.

219. The representatives affirmed that Article 6 of the American Convention includes four intimately related concepts: slavery, involuntary servitude, forced labor and trafficking of persons. They added that these four categories comprise a broader concept of contemporary forms of slavery. They pointed out that if involuntary servitude, forced labor and human trafficking are violations in and of themselves, they are also manifestations of contemporary forms of slavery.

220. The representatives noted that slavery, according to the 1926 Convention and the supplementary 1956 Convention regarding the abolition of slavery, slave trafficking and the institutions and practices similar to slavery (hereinafter the "1956 Convention"), reference is made to the exercise of some of the powers attaching to the right of ownership over another person, such as the powers to use, possess or dispose of another human being. Regarding forced labor, the representatives indicated that the Court identified in the *Ituango Massacres* case these two principle elements: i) threat of a sanction, and ii) lack of willingness to complete the job. Finally, human trafficking refers to the trade or transport of slaves.

221. The representatives alleged that multiple indicators facilitate the identification of contemporary forms of slavery, such as: i) recruitment through false promises or deceit; ii) transport of people for the purposes of exploitation; iii) abuse of a vulnerable situation; iv) control or restriction of the freedom of movement; v) control over personal belongings; vi) confiscation of identification documents; vii) intimidation or threats; viii) sexual or physical violence; ix) cruel or demeaning treatment; x) paltry salaries and withholding of them; xi) debt bondage; xii) excessively long workdays; xiii) being forced to live in the workplace; xiv) means in place to prevent workers from exiting workplace; xv) lack of will to begin or continue work; xvi) lack of informed consent about work conditions, and xvii) impossibility of freely making changes to worker conditions.

222. The representatives alleged that in this case there was indeed a structural situation of slavery in its modern and analogous forms at the Hacienda Brasil Verde. In their opinion, this conclusion is based on the following facts: i) the workers were recruited by *gatos* to be exploited for their labor; ii) the workers consented to travel to the Hacienda Brasil Verde on false pretenses, because they did not really know what their salary or working conditions would be; iii) the manager of the farm held on to and sometimes made modifications to their employment documents; iv) the workers were made to sign two different kinds of work contracts and blank documents even though the majority of them were illiterate; v) workers incurred debts with the *gatos* for transportation and advances; vi) workers had to pay for their own work

tools, toiletries and food at the farm store, at inflated prices; vii) workers could not leave the farm if they had debts; viii) the workdays extended past 12 hours; ix) working conditions were indecent, with unhealthy and insufficient food and no medical attention; x) the farm's armed guards prevented the workers from leaving; xi) threats and beatings happened when workers expressed a desire to leave the farm, and xii) workers were forced to live on the farm.

223. In addition to the above, they considered that through the imposition of fraudulent debts and armed surveillance, the workers were deprived of their freedom. The threats and beatings constituted risks to the lives and physical integrity of the workers. Also, the poor working conditions went against the honor and dignity of their persons. Finally, this situation prevented the free development of the trajectories of the workers' lives and annulled their right to the recognition of their legal personality. As a consequence of the above and because of the complicated, multi-offensive characteristics of slavery, servitude and human trafficking, they noted that the following rights of the workers were affected: the recognition of legal personality (Article 3 of the American Convention), humane treatment (Article 5), personal security and liberty (Article 7), dignity and privacy (Article 11), freedom of movement and residence (Article 22), in addition to all of it being discriminatory.

224. The representatives noted that in the present case there was also the structural framework of human trafficking. The Hacienda Brasil Verde met all the requirements of trafficking as defined by the Palermo Protocol. In place at the farm was a system of transportation of workers through means of fraud and deception for the purpose of labor exploitation.

225. The practice of slave labor in Brazil, according to the representatives, has a structural character and has been tolerated by the State. They added that the facts of the present case fall within this general context, which is why the Court must establish certain presumptions and reverse the burden of proof. They also alleged that certain evidentiary deficiencies in the present case are due precisely to the lack of diligence on the part of the State when the farm was being audited and investigated.

226. Regarding the responsibility of the State for violations of human rights committed by specific entities, the representatives concur with the Inter-American Commission's arguments. Specifically, the representatives argued that in the present case the majority of the victims are poor men between the ages of 17 and 40, dark-skinned and of African descent, from very impoverished states like Piauí, where they lived in situations of extreme poverty and vulnerability. Said situation would correspond to a problem of "structural discrimination." According to the representatives, "the Brazilian State did not meet its obligation to undertake effective actions to eliminate the practice of forced labor, human trafficking and debt bondage, nor did it remove the obstacles to judicial access based on the origin, ethnicity, race and economic status of the victims, permitting the continuation of structural discriminatory factors which allowed the workers at Hacienda Brasil Verde to be victims of human trafficking, slavery and forced labor." Therefore the representatives requested the declaration of a violation of Article 6 of the American Convention, in relation to, among other, Article 1(1) of the same instrument. Later on, in their final plea briefs, they also requested recognition of the violation of Article 24 of the Convention.

227. The representatives concluded that Brazil is responsible internationally for not meeting its obligation to guarantee respect to the prohibition of slavery contained in Article 6 of the American Convention, in relation to the rights to legal personality, humane treatment, personal liberty and security, honor, dignity, privacy, freedom of movement and residence (Articles 3, 5, 7, 11 and 22 of the Convention) with respect to all the individuals who worked at Hacienda Brasil Verde from the date of accepting the Court's jurisdiction. This responsibility is aggravated by the discriminatory character of the violations as well as the presence of victims under the age of 18.

228. The **State** noted that there must be a clear distinction made between the concepts of slavery, servitude and forced labor. While the concepts are related and equally prohibited by Article 6 of the American Convention, they maintain their legal individuality and have different degrees of severity and, therefore, must have differentiated sanctions in case of international responsibility. In Brazil's opinion, confusion must be avoided between different types of human exploitation in order not to trivialize slavery and make its eradication more difficult. In a similar vein, the State alleged that the Court must limit itself to considering slavery, involuntary servitude and forced labor in accordance with international law and not according to Brazilian domestic law, which has a much more expansive definition of these concepts without differentiating between them adequately.

229. The State also contended that the prohibition of slave labor is an *erga omnes* obligation with *jus cogens* characteristics. However these characteristics are not sufficient to determine the content of these standards.

230. Regarding forced labor, the State pointed out that according to ILO Convention No. 29, its elements are: i) work or service exacted from a person under threat of penalty and ii) work not offered voluntarily. It also noted that the Court, in the *Ituango Massacres* case, added as an additional requirement that the violation be attributable to the State. According to Brazil, one simple omission is not enough but rather it had to have been state conduct with the intention of taking part in the violation of rights or at least facilitating it.

231. Moreover, the State distinguished between serfdom and debt bondage. The elements of the first type would be: i) that the compulsory labor is carried out on land belonging to someone else; ii) the provision of services is not voluntary, and iii) the obligation is rooted in law, custom or an agreement. Also present would be the implicit threat of violence. Whereas the elements of debt bondage would be as follows: i) that the work is demanded as a guarantee for debt payment; ii) that the work would be undertaken voluntarily; iii) that the value of the work would be insufficient to settle the debt; iv) that the time frame of the work would be unlimited; and v) that the nature of the services would be undefined.

232. The State noted that, in accordance with the 1926 Convention, slavery refers to total or partial exercise of the powers of the rights of ownership over a person. Given that slavery is now legally abolished practically all over the world, the exercise of those powers will be a question of fact. That is, determining the presence of slave labor will always depend on the specific case. Brazil argued however

that the Court must focus on the internal element of slavery, which is to say, on its definition as the exercise of ownership over a person, more than on indicative, external or simply contextual elements that the representatives are purporting.

233. The State noted that the in the present case there is no evidence that slavery, forced labor or servitude existed on the Hacienda Brasil Verde after the acceptance of the Court's jurisdiction. It alleged that the audit of March 2000 concluded that the workers on Hacienda Brasil Verde were found to be in a situation of danger in terms of their health and physical well-being, and for those reasons they were rescued. Said audit confirmed a degrading work environment and various violations of worker rights under Brazilian labor law, which was sufficient to justify the rescue. However, in that moment no deprivation of liberty or exercise of the powers of dominion over the rescued workers was encountered. The State noted that this situation could have possibly been declared a crime under Article 149 of the Brazilian Criminal Code, but that in no case could it be characterized as slavery, servitude or forced labor as understood under the relevant rules of the International Human Rights Law. The State emphasized that the lone fact of the rescue of the workers is insufficient grounds for a violation of the American Convention, because Brazilian legislation has its own methods for dealing with less serious situations.

234. The State contended that as much from the audits as from the layoffs that occurred in the eight months before the March 2000 inspection, it can be deduced that the workers lent their services in precarious and transitory conditions, and with high turnover, as was usual in rural activities in the state of Pará. It added that the workers did not have any impediment to leaving their work on the farm and that there are no indications of armed surveillance on the aforementioned farm.

235. Brazil alleged that the representatives and the Commission had the task of proving that the workers on the Hacienda Brasil Verde were subject to the powers attaching to the right of ownership, that they found themselves deprived of their liberty or subject to unpayable debt. In the State's opinion, the representatives and the Commission did not succeed in proving the foregoing. In particular, the State alleged that contemporaneous evidence should be preferred over facts, such as the audit reports over the testimonial evidence rendered in this proceeding because, given the time that has elapsed, the testimonies are vague and contradictory.

236. The State denied that the representatives' supporting evidence is sufficient to prove the existence of slave labor. In particular, Brazil contended that: i) open-ended contracts are a common practice and more advantageous to workers under Brazilian legislation; ii) signing blank contracts had the purpose of defrauding the workers in order to pay them lower salaries than allowed by law, but it did not affect their personal liberty, and iii) work in degrading conditions does not constitute a violation of Article 6 of the American Convention. It added that in the following audit, in May of 2002, the situation of the farm workers was satisfactory and the only fines levied were for minor infractions of labor law.

237. The State noted that it cannot be responsible for every violation of human rights committed by private citizens within its boundaries; the contrary would imply a presumption of international

responsibility on the part of the State. Brazil alleged that there is no proof of participation or acquiescence on the part of state agents in the present case, such as jurisprudence of the Court requires. In its opinion, the representatives must have proven specific violations of Articles 1(1) and 2 of the American Convention, with respect to victims duly represented and found to be within the jurisdiction of the Court with consideration to its temporal and material limits. The State noted that there is no proof of any connection between state agents and the Hacienda Brasil Verde. Likewise, it affirmed that the eventual deficiencies in the investigation and persecution of slave labor are not sufficient to breach its duty to guarantee within the Inter-American system.

238. The State noted that it has met all international standards for the prevention and eradication of slave labor. In particular, it highlighted a series of public policies implemented as of 2002 aimed at: i) training, support and information for vulnerable persons; ii) awareness raising and engagement of employers; iii) strengthening services for inspection and investigation of slave labor, and iv) protection against abusive and fraudulent hiring practices.

239. Considering the above, the State requested that the Court judge inadmissible the petitions to recognize the existence of slave labor, involuntary servitude or forced labor in this case and declare that there were no violations on Brazil's part of Article 6 of the Convention.

B. The Court's Findings

240. In this section the Court will make observations concerning the alleged violations of various aspects of Article 6 of the American Convention regarding the freedom from slavery, involuntary servitude, forced labor and human trafficking. In order to do so, the Tribunal: i) will consider the development of these concepts in international law, so that it may then ii) clarify the content of the provisions referred to in Article 6 of the American Convention, and then iii) verify if the facts of the present case represent violations of the American Convention on Human Rights.

241. Article 6 of the American Convention stipulates:

> Article 6. Freedom from Slavery
> 1. No one shall be subject to slavery or to involuntary servitude, which are prohibited in all their forms, as are the slave trade and traffic in women.
> 2. No one shall be required to perform forced or compulsory labor. This provision shall not be interpreted to mean that, in those countries in which the penalty established for certain crimes is deprivation of liberty with forced labor, the carrying out of such a sentence imposed by a competent court is prohibited. Forced labor shall not adversely affect the dignity or the physical or intellectual capacity of the prisoner.
> 3. For the purposes of this article, the following do not constitute forced or compulsory labor:
> a. work or service normally required of a person imprisoned in execution of a sentence or formal decision passed by the competent judicial authority. Such work or service shall be carried out under the supervision and control of public authorities, and any persons performing such work shall not be placed at the disposal of any private party, company, or legal entity;
> b. military service and, in countries in which conscientious objectors are recognized, national service that the law may provide for in lieu of military service;

c. service exacted in time of danger or calamity that threatens the existence or the well-being of the community; or
d. work or service that forms part of normal civic obligations.

242. For the purposes of this Judgment, the Court will take into consideration only clauses 1 (slavery, involuntary servitude and slave trade and traffic in women) and 2 (forced labor) of Article 6 of the Convention, which refer to subjects of dispute in the present case. First the Court will consider each one of the concepts mentioned above.

243. The freedom from subjugation to slavery, involuntary servitude, forced labor, slave trade and traffic in women is fundamental to the American Convention. According to Article 27(2) of the Convention, it forms part of an irrevocable core of human rights, rights which cannot be suspended in times of war, public danger or other emergencies.

244. Since this is the first contentious case before the Inter-American Tribunal substantially related to clause 1 of Article 6,[354] the Court will make a brief summary of the development of this subject in international law, in order to expand upon the concepts of slavery, involuntary servitude, slave trade and traffic in women and forced labor, prohibited in the American Convention, in light of the general rules of interpretation established in its Article 29.[355]

245. On other occasions, this Court[356] as well as the European Court of Human Rights[357] (hereinafter "ECHR") have observed that treaties on human rights are living instruments whose interpretation has to keep up with the evolution of the times and the circumstances of people living in the present day. Such evolving interpretation is consistent with the general rules of interpretation enshrined in Article 29 of the American Convention, as well as the ones established by the Vienna Convention of the Law of Treaties.

246. To that effect, this Court has affirmed that, in giving interpretation to a treaty, not only does it take into account the agreements and instruments formally related to it (second clause of Article 31 of the Vienna Convention), but also the system within which it is to be applied (third clause of Article 31 of said Convention).[358] In order to issue an opinion on the interpretation of the legal provisions brought to this discussion, the Court will invoke the Vienna Convention on the Law of Treaties, which covers the general and customary interpretation of international treaties,[359] and involves the simultaneous and joint

354 In *Masacres de Río Negro v. Guatemala*, the Court ruled on the violation of the prohibition of servitude, but in that case the State recognized international responsibility regarding that violation, among others.
355 In this respect, the Court points out that the American Convention on Human Rights does not spell out a specific interpretation of the reach of the prohibition established in its Article 6.
356 *Cf.* The Right to Information about Consular Assistance in the Framework of Guarantees to Due Legal Process. Advisory Opinion 16/99, October 14, 1999, A16, para. 114; and *Artavia Murillo et al. ("In Vitro Fertilization") v. Costa Rica*. Preliminary Objections, Background, Reparations and Costs, November 28, 2012, C257, para. 245.
357 Cf. Las Masacres de *Ituango*, para. 144. See also ECHR, *Tyrer v. United Kingdom*, No. 5856/72, Judgment of April 25, 1978, para. 31.
358 *Cf.* Las Masacres de *Ituango*, para. 156. See also, *The Right to Information on Consular Assistance in the Framework of Guarantees to Due Legal Process*, para. 113, and *Artavia Murillo et al. ("In Vitro Fertilization")*, para. 191.
359 *Cf.* International Court of Justice, *Case relative to the sovereignty of Pulau Ligitan and Pulau Sipadan (Indonesia v. Malaysia)*, December 17, 2002, para. 37, and International Court of Justice, *Avena y otros nacionales mexicanos (Mexico v. USA)*, March 31, 2004, para. 83.

application of good faith, the ordinary sense of the terms used in the treaty in question, in addition to their context, object and purpose. The Court will use the methods of interpretation stipulated in Articles 31[360] and 32[361] of the Vienna Convention to accomplish said interpretation.[362]

247. In the present case, in analyzing the reach of Article 6 of the American Convention, the Tribunal considers it useful and appropriate to refer to other international treaties besides the Convention to interpret their provisions in light of the evolution of the Inter-American system, taking into consideration the developments in this field among various branches of international law, in particular international law on human rights.[363]

B.1. Evolution of the prohibition against slavery, involuntary servitude, forced labor and practices similar to slavery, in international law

248. The process of the universal elimination of the practice of slavery took shape in the 18th century when various national tribunals agreed to declare that such a practice was no longer acceptable. Without prejudice to different bilateral and multilateral initiatives to prohibit slavery in the 19th century, the first universal treaty on the subject was the 1926 Convention on Slavery, adopted in Geneva on September 25, 1926, under the auspices of the League of Nations, and which prescribed the following:

> Article 1
> For the purpose of the present Convention the following definitions are agreed upon:
> 1. Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.

[360] Vienna Convention on the Law of Treaties, Article 31. General rule of interpretation. 1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose.
2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes: a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty; b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.
3. There shall be taken into account, together with the context: a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions; b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation; c) any relevant rules of international law applicable in the relations between the parties.
4. A special meaning shall be given to a term if it is established that the parties so intended.
[361] Vienna Convention on the Law of Treaties, Article 32. Supplementary means of interpretation. Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of Article 31, or to determine the meaning when the interpretation according to Article 31: a) leaves the meaning ambiguous or obscure; or b) leads to a result which is manifestly absurd or unreasonable.
[362] *Entitlement to rights of legal persons in the Inter-American system of human rights (Interpretation and reach of Article 1(2), in relation to Articles 1(1), 8, 11.2, 13, 16, 21, 24, 25, 29, 30, 44, 46, and 62(3) of the American Convention on Human Rights, as well as Article 8(1)(A) and (B) of the Protocol of San Salvador)*. Advisory Opinion 22/16, February 26, 2016, A22, para. 35.
[363] In this regard the Court has noted that the corpus juris of international law on human rights is made up of a set of international instruments with varied legal content and effects (treaties, conventions, resolutions and declarations). Its dynamic evolution has had a positive impact in international law, in the sense of affirming and developing the law's suitability to regulate relations between States and the human beings under their respective jurisdictions. Therefore this Court must adopt adequate criteria for considering the question under examination in the context of the evolution of the fundamental rights of the human being in contemporary international law. *Cf. The Right to Information about Consular Assistance in the Framework of the Guarantees to Due Legal Process*, para. 115; and *Las Masacres de Ituango*, para. 157.

> 2. The slave trade includes all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves.
>
> Article 2
> The High Contracting Parties undertake, each in respect of the territories placed under its sovereignty, jurisdiction, protection, suzerainty or tutelage, so far as they have not already taken the necessary steps:
> a) To prevent and suppress the slave trade;
> b) To bring about, progressively and as soon as possible, the complete abolition of slavery in all its forms.

249. From then on, various international treaties have reiterated the prohibition against slavery,[364] which is considered an imperative rule of international law (*jus cogens*),[365] and carries with it *erga omnes* obligations according to the International Court of Justice.[366] In the present case all the parties have expressly recognized this international legal status of the prohibition against slavery. Likewise, Brazil as well as the majority of countries in the region[367] are parties to the 1926 Convention on Slavery and the 1956 Supplementary Convention on the Abolition of Slavery.

[364] For example, the Universal Declaration of Human Rights, 1948, Art. 4; 1956 Supplementary Convention on the Abolition of Slavery, Art. 1; 1966 International Covenant on Civil and Political Rights, Art. 8; 1950 European Convention on Human Rights, Art. 4; 1988 Rome Statute of the International Criminal Court, Art. 7; 1999 International Labor Organization Convention No. 182, Art. 3; 1982 African Charter on Human and Peoples Rights, Art. 5; 1969 American Convention on Human Rights, Art. 6.
[365] *See*, among others, expert testimony of Jean Allain in the public hearing.
[366] *Cf. Masacres de Río Negro*, para. 141, and International Court of Justice, *Barcelona Traction, Light and Power Company, Limited* (*Belgium vs. Spain*), Judgment of February 5, 1970, para. 34.
[367] *Cf.* Countries that have signed on to the 1926 Convention on Slavery and its protocols:: Antigua and Barbuda, Bahamas, Barbados, Bolivia, Brazil, Canada, Chile, Cuba, Dominica, Ecuador, USA, Guatemala, Jamaica, Mexico, Nicaragua, Paraguay, St. Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago and Uruguay. See: https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280030bab; https://treaties.un.org/Pages/showDetails.aspx?objid=080000028000006f9; https://treaties.un.org/Pages/showDetails.aspx?objid=080000028002fe57; and countries in the region that have signed on to the supplementary 1956 Convention on the Abolition of Slavery: Antigua and Barbuda, Argentina, Bahamas, Barbados, Bolivia, Brazil, Canada, Chile, Cuba, Dominica, Ecuador, USA, Guatemala, Haiti, Jamaica, Mexico, Nicaragua, Paraguay, Dominican Republic, Saint Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago and Uruguay. *See*: https://treaties.un.org/Pages/showDetails.aspx?objid=080000028003103d.

250. The 1956 Supplementary Convention on the Abolition of Slavery,[368] broadened the definition of slavery to include within the absolute prohibition against slavery "institutions and practices similar to slavery," such as debt bondage and serfdom, among others.[369]

251. In the field of international human rights law, the Universal Declaration on Human Rights of 1948 stipulates in its Article 4 that "[n]o one shall be held in slavery or servitude," and that "slavery and the slave trade shall be prohibited in all their forms."[370] The 1966 International Covenant on Civil and Political Rights, stipulates in Article 8(1) and 8(2) that "[n]o one shall be held in slavery", that "slavery and the slave-trade in all their forms shall be prohibited," and that "[n]o one shall be held in servitude."[371]

252. On the regional level, the 1950 European Convention on Human Rights stipulates a prohibition on slavery, servitude and forced labor in a generic way in its Article 4.[372] The 1981 African Charter on Human and Peoples Rights prohibits slavery together with all forms of human exploitation and degradation, such as the slave trade, torture, and cruel, inhuman or degrading punishment.[373]

[368] Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, Article 1: Each of the States Parties to this Convention shall take all practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete abolition or abandonment of the following institutions and practices, where they still exist and whether or not they are covered by the definition of slavery contained in article 1 of the Convention on Slavery signed in Geneva on September 25,1926:
a) Debt bondage, that is to say, the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined;
b) Serfdom, that is to say, the condition or status of a tenant who is by law, custom or agreement bound to live and labor on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status;
c) Any institution or practice whereby:
i) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or;
ii) The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or;
iii) A woman on the death of her husband is liable to be inherited by another person;
d) Any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labor.

[369] Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, Article 7: "For the purposes of the present Convention: a) "Slavery" means, as defined in the 1926 Convention on Slavery, the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, and "slave" is every person in such condition or status; b) "A person of servile status" means a person in the condition or status resulting from any of the institutions or practices mentioned in article 1 of this Convention; c) "Slave trade" means and includes all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a person acquired with a view to being sold or exchanged; and, in general, every act of trade or transport in slaves by whatever means of conveyance."

[370] Universal Declaration on Human Rights, Article 4: "No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms."

[371] International Covenant on Civil and Political Rights, Article 8: "1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited. 2. No one shall be held in servitude. 3. a) No one shall be required to perform forced or compulsory labor [...]".

[372] European Convention on Human Rights, Article 4: "Prohibition of slavery and forced labor. 1. No one shall be held in slavery or servitude. 2. No one shall be required to perform forced or compulsory labor".

[373] African Charter on Human and Peoples Rights, Article 5: "Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited".

253. The International Labor Organization (ILO) also refers to the prohibition on slavery and similar practices in its 1999 Convention No. 182, concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor.[374] The ILO also specifically referred to the 1956 supplementary Convention, considering that "forced or compulsory labor can lead to conditions similar to slavery," and therefore the need to eliminate forced labor.[375]

254. In addition to the universal and regional treaties already mentioned, other relevant legal documents from different branches of international law mirror the prohibition on slavery and its analogous forms. Regarding international tribunals in the post-WWII era, the 1945 Charter of the International Military Tribunal at Nuremberg,[376] and the 1946 International Military Tribunal at Tokyo[377] prohibit slavery as a crime against humanity.

255. Also in the sphere of international humanitarian law, the Additional Protocol II to the Geneva Convention declares the prohibition of "slavery and the slave trade in all their forms" "at any time and in any place whatsoever."[378]

256. Slavery has also been considered a crime against humanity in international criminal courts with jurisdiction over such matters. The Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia (hereinafter "International Criminal Tribunal for the former Yugoslavia" or "ICTY"), formed in 1993, establishes "slavery" (enslavement) as a crime against humanity (Article 5 (c)).[379] The Statutes of the International Tribunal for Rwanda, in 1994, and of the Special Court for Sierra Leone, in

[374] ILO Convention No. 182 concerning the prohibition and immediate action for the elimination of the worst forms of child labor, article 3: "For the purposes of this Convention the term "the worse forms of child labor" comprises: (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom, and forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict [...]".
[375] ILO Convention No.105 concerning the abolition of forced labor, 1957, Preamble.
[376] Charter of the Military Tribunal at Nuremberg, October 6, 1945, Art. 6(c): "The Tribunal established by the Agreement referred to in Article 1 hereof for the trial and punishment of the major war criminals of the European Axis countries shall have the power to try and punish persons who, acting in the interests of the European Axis countries, whether as individuals or as members of organizations, committed any of the following crimes: The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility: [...] c) CRIMES AGAINST HUMANITY: Namely, murder, extermination, enslavement, deportation, and other inhumane acts committed again any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated."
[377] Charter of the International Military Tribunal for the Judgment of the Principal War Criminals in the Far East (International Military Tribunal of Tokyo), January 19, 1946, Article 5: "Jurisdiction Over Persons and Offenses. The Tribunal shall have the power to try and punish Far Eastern war criminals who as individuals or as members of organizations are charged with offenses which include Crimes against Peace. The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility: [...] c. Crimes against Humanity: Namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political or racial grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated. Leaders, organizers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any or the foregoing crimes are responsible for all acts performed by any person in execution of such plan."
[378] Additional Protocol II to the Geneva Convention of 1949 relative to the protection of victims of non-international armed conflicts, 1977, Art. 4(2)(f). Available here: https://www.icrc.org/spa/resources/documents/misc/protocolo-ii.htm.
[379] Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia. Available here: https://www.icrc.org/spa/resources/documents/misc/treaty-1993-statute-tribunal-former-yugoslavia-5tdm74.htm.

2000, include "slavery" as a crime against humanity in their Article 3(c) and 2(c), respectively.[380] The Rome Statute of the International Criminal Court, in 1998, classified slavery as a crime against humanity and defined enslavement as "the exercise of the powers attaching to the right of ownership over one or more persons and includes the exercise of such power in the course of trafficking in persons, in particular women and children."[381]

257. More recently, the Draft Code of Crimes against the Peace and Security of Mankind, approved in 1996 by the International Law Commission (Article 18(d))[382] and the Draft article on crimes against humanity, approved provisionally in 2015, also by the International Law Commission, establish that enslavement is a crime against humanity (Article 3(1)(c)), which is defined in the latter document as "the exercise of any or all of the powers attaching to the right of ownership over one or more persons, and includes the exercise of such powers in the course of trafficking of persons, in particular women and children" (Article 3(2(c)).[383]

258. Hereafter the Court will review the interpretation of the definition of slavery and its analogous forms, according to various international tribunals which have had the opportunity to rule on this crime, as well as the ILO and UN bodies specializing in the subject.

B.2. International Tribunals and Quasi-judicial Bodies

259. In its historic decision in the case of *Prosecutor v. Kunarac*,[384] the Court of Appeals of the International Criminal Tribunal for the former Yugoslavia defined slavery as "the exercise of any or all of the powers attaching to the right of ownership over a person." It is important to note that the International Criminal Tribunal for the former Yugoslavia, in its first instance judgment, established the following criteria to determine the existence of a situation of enslavement or reduction to servitude: a) restriction or control of individual autonomy, the freedom to choose and the freedom of movement of a person; b) profit gain on the part of the perpetrator; c) absence of victim's consent or free will, or its impossibility or irrelevance due to the threat of use of violence or other forms of coercion, the fear of violence, deception or false promises; d) abuse of power; e) victim's position of vulnerability; f) imprisonment or captivity, and g) psychological oppression because of socio-economic conditions. Other indicators of enslavement would be: h) exploitation; i) extraction of work or forced or compulsory labor, generally without

380 Statute of the International Tribunal for Rwanda, Art. 3(c). Available here: https://www.icrc.org/spa/resources/documents/misc/treaty-1994-statute-tribunal-rwanda-5tdmhw.htm; Statute of the Special Court for Sierra Leone, Art. 2(c). Available here: http://www.rscsl.org/Documents/scsl-statute.pdf.

381 The Rome Statute of the International Criminal Court, 1998, Article 7(1): "Crimes against humanity. 1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systemic attack directed against any civilian population, with knowledge of the attack: [...] c) Enslavement [...] Article 7(2): "2. For the purpose of paragraph 1: [...] c) "Enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children [...]".

382 International Law Commission, Draft Code of Crimes against the Peace and Security of Mankind, Art. 18(d). Available here: http://legal.un.org/docs/?path=../ilc/texts/instruments/english/draft_articles/7_4_1996.pdf&lang=EF .

383 International Law Commission, Draft article on crimes against humanity, Article 3(2)(c). Available here: http://legal.un.org/docs/?path=../ilc/reports/2015/spanish/chp7.pdf&lang=EFSRAC.

384 ICTY *Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic* (henceforth *Prosecutor v. Kunarac*), No. IT-96-23. Court of First Instance, Judgment of February 22, 2001; and No. IT-96-23-A, Appellate Court, Judgment of June 12, 2002.

remuneration and linked frequently –although not necessarily– to physical hardship, sex, prostitution and human trafficking.[385] In the Appellate Court's ruling the evolving interpretation of the concept of slavery was elaborated, highlighting that the important element in this day and age is not the title of ownership over the slave so much as the exercise of powers linked to ownership which translate into the destruction or annulment of the legal personality of the human being.[386] The International Criminal Tribunal for the former Yugoslavia considered that at the moment of the facts of the case (which occurred in 1992), the contemporary forms of slavery identified in said Ruling were part of slavery as a crime against humanity under customary international law.[387]

260. Subsequently, in the *Krnojelac* case, the International Criminal Tribunal for the former Yugoslavia confirmed the criteria established in the Kunarac case and noted in the latter case that slavery was related to the goal of forced labor.[388]

261. The Special Court for Sierra Leone (hereinafter "SCSL"), in the Rulings of Sesay, Kallon and Gbao[389] and Brima, Kamara, Kanu, from 2007, reaffirmed the criteria established by the International Criminal Tribunal for the former Yugoslavia in the Kunarac and Krnojelac cases.[390] The Special Court for Sierra Leone also considered forced labor to be a form of slavery in the case of Charles Taylor, among others. To that effect, it affirmed that "in order to consider forced labor to be slavery, the relevant point is to consider if 'the people in question did not have an option concerning where they would work,' which determination is factual" and objective, and not based on the subjective perspective of the victims.[391]

262. The Court of Justice of the Economic Community of West African States (hereinafter also the "ECOWAS Court of Justice"), in the case of *Adijatou Mani Koraou v. Niger*,[392] reaffirmed the absolute prohibition on slavery in international law and the developments outlined above, to affirm that the crime of slavery is characterized depending on the notion of "powers related to ownership," taking as a fundamental element the amount of power or control exercised over an individual. The ECOWAS Court of Justice concurred with the International Criminal Tribunal for the former Yugoslavia (*Prosecutor v. Kunarac*) in the sense that slavery depends on the presence of various factors or indications of servitude such as control of a person's movements, control of the physical environment, psychological control,

385 ICTY, *Prosecutor v. Kunarac*, Judgment of February 22, 2001, para. 542.
386 ICTY, *Prosecutor v. Kunarac*, Judgment of June 12, 2012, para. 117.
387 ICTY, *Prosecutor v. Kunarac*, Judgment of June 12, 2012, para. 117.
388 ICTY, *Prosecutor v. Milorad Krnojelac* (hereafter *Prosecutor v. Krnojelac*), No. IT-97-25-T, Court of First Instance, March 15, 2002, para. 357.
389 SCSL, *Prosecutor v. Sesay, Kallon and Gbao*, Trial judgment, Case No. TESS-04-15-T, Court of First Instance, March 2, 2009, para. 199.
390 SCSL, *Prosecutor v. Brima, Kamara and Kanu*, No. TESS-04-16-T-628, Court of First Instance, June 20, 2007, paras. 744 to 748.
391 SCSL, *Prosecutor v. Charles Taylor*, No. TESS-03-01-T, Court of First Instance, May 18, 2012, para. 448.
392 ECOWAS Court of Justice, *Mme Hadijatou Mani Koraou v. Republic of Niger*, No. ECW/CCJ/JUD/06/08, Judgment of October 27, 2008.

measures taken to prevent or impede escape, the use of force, threat or coercion, time frame of servitude, subjugation to cruel and abusive treatment, control of sexuality and forced labor.[393]

263. In 2005 the European Court of Human Rights had the opportunity to consider for the first time the phenomenon of slavery and servitude in the case of *Siliadin v. France*.[394] Even though the ECHR did not classify the specific situation in litigation as slavery (understood here according to the classic definition of the 1926 Convention), it considered the situation of Mrs. Siliadin to be one of involuntary servitude. In this matter the Court made mention, among other instruments, of the 1956 Supplementary Convention. And it concluded that involuntary servitude represents the "obligation to provide services to another person, through coercion, and it is associated with slavery." Likewise, the "servant" is obliged to live on the other person's property without the possibility of changing her circumstances.[395] Other relevant factors in determining the condition of involuntary servitude were the fact that the victim was a minor and completely helpless, in addition to being vulnerable and isolated to the point of not being able to live anywhere other than in complete dependence on her tormentors, without freedom of movement or time off.[396]

264. On the other hand, in a more recent ruling, in 2010, the ECHR departed from the "classic" definition of slavery mentioned in the Siliadin case, and recognized, as the International Criminal Tribunal for the former Yugoslavia had in the Kunarac case, that the traditional concept of slavery has evolved to encompass different forms of slavery based on the exercise of the powers of the rights of ownership, reiterating relevant factors listed by the International Criminal Tribunal for the former Yugoslavia to make a determination on whether the situation in question represented a modern form of slavery.[397]

265. In another recent case, the Extraordinary Chambers in the Courts of Cambodia, in the *Duch* case ruling,[398] made use of the developing concept of slavery to establish their definition in the same way it was expressed by the International Criminal Tribunal for the former Yugoslavia in *Kunarac* and by the international tribunals mentioned above.

266. The African Commission on Human and Peoples Rights, in *Malawi African Association et al. v. Mauritania*[399] concerning practices similar to slavery and racial discrimination against black ethnic

[393] ECOWAS Court of Justice, *Mme Hadijatou Mani Koraou v. Republic of Niger*, No. ECW/CCJ/JUD/06/08, Judgment of October 27, 2008, paras. 76 to 79.
[394] ECHR, *Siliadin v. France*, No. 73316/01, Judgment of July 26, 2005, paras. 82 to 149.
[395] ECHR, *Siliadin v. France*, paras. 123 and 124.
[396] ECHR, *Siliadin v. France*, paras. 126 and 127.
[397] ECHR, *Rantsev v. Cyprus and Russia*, No. 25965/04, Judgment of January 7, 2010, paras. 279 and 280.
[398] Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of the Democratic Kampuche, Duch Case, No. 001/18-07-2007/ECCC/SC, Supreme Court Chambers, Judgment of February 3, 2012, paras. 117-167.
[399] African Commission on Human and Peoples Rights, *Malawi African Association et al v. Mauritania*, Communications Nos. 54/91, 61/91, 98/93, 164/97-196/97 and 210/98 (2000), Decision of May 11, 2000, paras. 132-135.

groups, ruled that Article 5 of the African Charter on Human and Peoples Rights was violated,[400] due to the State's lack of action to prevent practices analogous to slavery in its territory.

267. In addition to these international courts, other international instruments have been used in a similar vein, giving substance to the phenomenon of present-day slavery to include forms that are analogous or contemporary. To that effect, the Court highlights the pronouncements of the United Nations CEDAW Committee,[401] the United Nations Human Rights Committee[402], the United Nations Working Group on Contemporary Forms of Slavery,[403] the United Nations Special Rapporteur on Trafficking in Persons,[404] the Office of the United Nations High Commissioner for Human Rights[405] and the Inter-American Commission on Human Rights.[406]

268. In the above review of binding international instruments and international tribunal rulings, it can be observed that the absolute and universal prohibition of slavery is well established in international law, and the definition of slavery has not substantially varied since the 1926 Convention: "Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised." Regarding the two elements of the traditional definition of slavery, or chattel slavery[407] (status or condition of a person; exercise of one or more powers attaching to the right of ownership), it is verifiable that: i) since the 1926 Convention, the slave trade has been equated with slavery for the purposes of its prohibition and elimination; ii) the 1956 Supplementary Convention extended the protection against slavery to include "institutions and practices similar to slavery," such as debt bondage and serfdom, among others,[408] in addition to clarifying the prohibition of the slave trade and States' obligations regarding said prohibition, and iii) the Rome Statute and the International Law Commission added the "exercise of the powers attaching to the right of ownership in the course of the trafficking of persons" to the definition of slavery.

[400] Article 5: "[a]ll forms of exploitation and degradation of man, in particular slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited".
[401] CEDAW, UN Doc. A/55/38, Part I, May 1, 2000, para. 113: "The Committee considers forced labor of women to be a contemporary form of slavery and a denial of their rights"; CEDAW, UN Doc. A/57/38, Part II, September 15, 2002, para. 383: "The Committee wishes to draw attention to the increasingly serious general aspects of trafficking in women, which constitutes a major part of contemporary trade in persons, is a form of slavery and a violation of Article 6 of the Convention".
[402] Human Rights Committee, Concluding Observations on Croatia, CCPR/CO/71/HRV, April 30, 2001: "The State Party must adopt appropriate methods for combatting this practice [of trafficking in women in and through its territory, especially with the goal of sexual exploitation), which constitutes a violation of various rights specified in the Pact, including the right not to be subject to slavery or involuntary servitude, enshrined in Article 8".
[403] UN Working Group on Contemporary Forms of Slavery, Report No. E/CN.4/Sub.2/1993/30, June 23, 1993, para. 99; Report no. E/CN.4/Sub.2/1998/14, July 6, 1998, para. 97.6.
[404] UN Special Rapporteur on trafficking in persons, especially women and children, Report No. E/CN.4/2005/71, December 22, 2004, para. 18.
[405] OHCHR, Abolishing Slavery and its Contemporary Forms, David Weissbrodt and Anti-Slavery International, UN Doc. HR/PUB/02/4, 2002. Available here: http://www.ohchr .org/Documents/Publications/slaveryen.pdf.
[406] IACHR, Captive communities: situation of the Guaraní indigenous people and contemporary forms of slavery in the Bolivian Chaco, Report OEA/Ser.L/V/II. Doc. 58, 2009.
[407] "Chattel" slavery corresponds to what used to be understood as moveable asset slavery, in reference to classic slavery or legal slavery in which one person legally belonged to another. See expert testimony of Jean Allain (evidence file, pages 14915 and 14920).
[408] 1956 Supplementary Convention, Article 1.

B.3. Elements of the concept of slavery

269. Taking into account the development of the concept of slavery in international law and the prohibition of slavery as established in Article 6 of the American Convention on Human Rights, the Court observes that these ideas have evolved and are no longer limited to the ownership of a person. With that in mind, the Court considers the two fundamental elements necessary to the definition of a situation as slavery to be: i) the status or condition of a person, and ii) the exercise of some of the powers attaching to the right of ownership, that is, that the enslaver exercises power or control over the enslaved person to the point of destroying the personality of the victim. The characteristics of each one of these elements are understood according to the criteria or factors identified below.

270. The first element (status or condition) refers as much to the *de jure* as the *de facto* situation, which is to say that it is not essential that there be a formal document or a legal standard for the characterization of this phenomenon, as in the case of chattel or traditional slavery.

271. "Ownership" is a term best understood in the phenomenon of slavery as "possession," that is, the demonstration of one person's control over another person. Therefore, "in determining the level of control required to consider a condition as enslavement, [...] what must be taken into account is the loss of one's free will or a considerable reduction in one's personal autonomy."[409] In this sense what is termed as "exercise of the powers of ownership" must be understood in this day and age as the control exercised over a person which significantly restrains or deprives an individual of autonomy,[410] with the intention to exploit through the use, management, earnings, transfer or divestiture of a person. In general, this exercise is achieved and obtained through the use of methods such as violence, deception and/or coercion.[411]

272. The Court agrees with these criteria and considers them in accordance with the decisions of the Criminal Tribunal for the former Yugoslavia, the Special Court for Sierra Leone, and The Court of Justice of the Economic Community of West African States (*supra* paras. 259 to 262). Therefore, in order to classify a situation as slavery in the present day, the demonstration of the so-called "powers attaching to the rights of ownership" must be evaluated based on the following elements:

a) restriction or control of individual autonomy;

b) loss or restriction of a person's freedom of movement;

c) profit gain on the part of the perpetrator;

d) victim's absence of consent or free will, or its impossibility or irrelevance due to the threat of use of violence or other forms of coercion, the fear of violence, deception or false promises;

409 *Cf.* Expert testimony brief of Jean Allain, page 14929.
410 Expert testimony brief of Jean Allain, page 14930; International Criminal Court, Assembly of States Parties, Elements of Crimes, Document ICC-ASP/1/3, September 9, 2002, pp. 117, 120, 141 and 151).
411 Expert testimony brief of Jean Allain, page 14931; and Bellagio-Harvard Guidelines from 2012 on Legal Parameters of Slavery, Guideline No. 2.

e) use of physical or psychological violence;

f) victim's position of vulnerability;

g) imprisonment or captivity,

h) exploitation.[412]

273. It is evident from the foregoing that the confirmation of a situation of slavery represents a substantial restriction of the legal personality of a human being[413] and it could also represent violations to the rights of personal integrity, personal freedom and to one's dignity, among other things, depending on the specific circumstances of each case.

B.4. Prohibition and definition of involuntary servitude as an analogous form of slavery

274. Before proceeding to an analysis of the concrete facts of this case, the Court considers it pertinent to make a few observations on the interpretation of involuntary servitude, trafficking of slaves and women and forced labor, as regards Article 6 of the American Convention. In doing so, the Court will make reference to the evolution of said concepts in international law.

275. Regarding involuntary servitude, its absolute prohibition came into being with the 1956 Supplementary Convention, and it became codified in subsequent instruments of international law, (*supra* paras. 249 to 257). Article 1 of the 1956 Supplementary Convention asserts that debt bondage and serfdom are practices similar to slavery which should be abolished and abandoned. All the regional instruments include a prohibition on involuntary servitude, and it has been deemed analogous to slavery by, among others, the European Court for Human Rights,[414] the Criminal Tribunal for the former Yugoslavia, the Special Court for Sierra Leone, and other specialized bodies (*supra* paras. 259 to 268).

276. Based on the above, the Court confirms that the absolute prohibition of traditional slavery and its interpretation have evolved to also include established analogous forms of the phenomenon, which manifests itself in this day and age in various ways, but it always maintains essential recognized characteristics common to traditional slavery, such as the exercise of control over a person through physical or psychological coercion to such a degree that it implies the loss of one's individual autonomy and exploitation against one's will.[415] Therefore, the Inter-American Court considers involuntary

412 ICTY, *Prosecutor v. Kunarac*, Court of First Instance, para. 542.
413 ICTY, *Prosecutor v. Kunarac*, Appellate Court, para. 117; and ECHR, *Rantsev v. Cyprus and Russia*, paras. 280 and 281.
414 ECHR, *Siliadin v. France*, para. 124
415 The Appeals Chamber of the Criminal Tribunal for the former Yugoslavia also understood it in this way and affirmed that: "117. The Appeals Chamber accepts the chief thesis of the Trial Chamber that the traditional concept of slavery, as defined in the 1926 Slavery Convention and often referred to as "chattel slavery", has evolved to encompass various contemporary forms of slavery which are also based on the exercise of any or all of the powers attaching to the right of ownership. In the case of these various contemporary forms of slavery, the victim is not subject to the exercise of the more extreme rights of ownership associated with "chattel slavery", but in all cases, as a result of the exercise of any or all of the powers attaching to the right of ownership, there is some destruction of the legal personality; the destruction is greater in the case of "chattel slavery" but the difference is one of degree. The Appeals Chamber considers that, at the time relevant to the alleged crimes, these contemporary

servitude to be an analogous form of slavery that must enjoy the same protections and carry with it the same obligations as traditional slavery.

277. Accordingly, the Court will specify the reach of said prohibition foreseen in Article 6(1) of the Convention. In doing so the Tribunal considers it useful and appropriate to examine the development of this idea within international human rights law.

278. As previously affirmed, the 1956 Supplementary Convention defined analogous forms of slavery as serfdom[416] and debt bondage,[417] among other forms.[418]

279. The European Court of Human Rights, in the case of *Siliadin v. France* mentioned previously, determined that involuntary servitude consists of "the obligation to perform work for others, under coercion, and the obligation to live on another person's property without the possibility of changing this circumstance."[419] Subsequently, the European Court considered involuntary servitude to be "an aggravated form of forced or compulsory labor," in the sense that the victims feel their condition to be permanent and that there is no possibility of changing it.[420] Also, the forms of coercion may be explicit or subtle[421].

280. Based on the above, the Court agrees with the European Court's definition of "involuntary servitude," and considers that its expression in Article 6(1) of the American Convention should be interpreted as "the obligation to perform work for others, under coercion, and the obligation to live on another person's property without the possibility of changing this circumstance."

B.5. Prohibition and definition of the slave trade and trafficking of women

281. The American Convention prohibits both the slave trade and the trafficking of women "in all their forms," such that the Court interprets this prohibition broadly and subjects the refinements of its

forms of slavery formed part of enslavement as a crime against humanity under customary international law." ICTY, *Prosecutor v. Kunarac*, Appeals Chamber, para. 117.

416 Serfdom, that is, the condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status. 1956 Convention, Article 1.

417 Debt bondage, that is to say, the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined. 1956 Convention, Article 1.

418 (c) Any institution or practice whereby:
(i) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or
(ii) The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or
(iii) A woman on the death of her husband is liable to be inherited by another person;
(d) Any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour. 1956 Convention, Article 1.

419 ECHR, *Siliadin v. France*, para. 123.

420 ECHR, *C.N. and V. v. France*, No. 67724/09, Judgment of October 11, 2012, para. 91.

421 ECHR, *C.N. v. United Kingdom*, No. 4239/08, Judgment of November 13, 2012, para. 80.

definition to developments in international law. The Court will now proceed to evaluate the evolution of the prohibition of the slave trade and the trafficking of women in international law in an effort to define the regulatory content of said prohibition in light of the American Convention.

282. The prohibition of the slave trade has been associated with slavery itself[422] since the 1926 Convention and it implies obligations on the part of the States to abolish said practices.[423] Its prohibition is absolute and explicit in all the instruments reviewed in the previous paragraphs.

283. The prohibition on the trafficking of women (and children) is the topic of various international treaties approved during the 20th century,[424] consolidated with the 1949 Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others.[425] As a key element in the prohibition of prostitution and the traffic of persons for that purpose, Article 1 of said Convention refers to the element of "consent" and the exploitation (through prostitution) of another person.

284. The main international treaty focused on human trafficking is the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (hereinafter the "Palermo Protocol"), from the year 2000, which establishes a clear prohibition of the traffic of persons in its Article 4.[426] Also, Article 3 of said Protocol defines the trafficking of persons or human trafficking in the following terms:

> a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs;
>
> b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

422 *See* expert testimony brief of Jean Allain, page 14917.
423 According to expert witness Jean Allain, "The prohibition of slavery coincides with the prohibition of the slave trade", expert testimony brief of Jean Allain, page 14917.
424 International Agreement for the Suppression of the White Slave Traffic signed on May 18, 1904, amended by the Protocol approved by the UN General Assembly on December 3, 1948; International Convention for the Suppression of the White Slave Traffic signed on May 4, 1910 amended by the Protocol approved by the UN General Assembly on December 3, 1948; International Convention for the Suppression of the Traffic in Women and Children signed on September 30, 1921, amended by the Protocol approved by the UN General Assembly on October 20, 1947; International Convention for the Suppression of the Traffic in Women of Full Age signed on October 11, 1933 and amended by the Protocol approved by the UN General Assembly on October 20, 1947.
425 See Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others. Available here: http://www.ohchr.org/SP/ProfessionalInterest/Pages/TrafficInPersons.aspx.
426 Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, Article 4. Available here: http://www.ohchr .org/Documents/ProfessionalInterest/ProtocolTraffickingInPersons_sp.pdf.

> c) The recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article […]

285. In a similar way, the 2005 Council of Europe Convention on Action against Trafficking in Human Beings establishes the prohibition of the traffic of human beings and clarifies State obligations in that regard, which are similar to the Palermo Protocol.[427]

286. The traffic in persons was also referred to directly as a form of slavery by various UN Special Procedures related to the subject. The Working Group on Contemporary Forms of Slavery declared that the trafficking of women and children for the purposes of exploitation is a contemporary form of slavery and that the international treaties against slavery include human trafficking.[428] The Special Rapporteur on violence against women also adopted a similar position.[429] The Special Rapporteur on contemporary forms of slavery, its causes and consequences, affirmed in 2009 that human trafficking in the context of bonded labor and advanced payments is also a form of slavery in which the trafficker is in a dominant position.[430] The Special Rapporteur on trafficking in persons, especially women and children, also considered the trafficking of persons as a "modern day slave trade" on a massive scale.[431] The Special Rapporteur also affirmed that human trafficking is a violation of several human rights, among them the right not to be subjugated to slavery or servitude.[432]

287. In the European system of human rights, even though it is not explicitly mentioned in the European Convention on Human Rights,[433] the European Tribunal affirmed that the definition of human trafficking in the Palermo Protocol is included in the prohibition on slavery, servitude and forced labor in Article 4 of the European Convention.[434] In the Case of *Rantsev v. Cyprus and Russia*, the European Tribunal

427 Council of Europe Convention on Action against Trafficking in Human Beings, Article 4: For the purposes of this Convention: a) "Trafficking in human beings" shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs b) The consent of a victim of "trafficking in human beings" to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used; c) The recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall be considered "trafficking in human beings" even if this does not involve any of the means set forth in subparagraph (a) of this article; [...]

428 Report from UN Working Group on Contemporary Forms of Slavery, Sub-commission on Prevention of Discrimination and Protection of Minors, Resolution E/CN.4/Sub2/RES/1998/19, para. 20.

429 Report of the Special Rapporteur on violence against women, its causes and consequences, UN Doc. E/CN.4/1997/47, 12 February 1997, para. 98: "Conditions under which many trafficked women are forced to work […] must be considered, without a doubt, to be within the realm of slavery and slavery-like practices."

430 Report from the Special Rapporteur on contemporary forms of slavery, its causes and consequences, UN Doc. A/HRC/12/21, July 10, 2009, p. 15.

431 Report from the Special Rapporteur on trafficking in persons, especially women and children, UN doc. A/HRC/10/16, February 20, 2009, p. 5: "The world today is confronted with a huge human trafficking problem, driven by the same forces that drive the globalization of markets, as there is no lack of demand and supply. In varying degrees and circumstances, men, women and children all over the world are victims of what has become a modern day slave trade."

432 Report from the Special Rapporteur on trafficking in persons, especially women and children, p. 9.

433 European Convention on Human Rights, Article 4: Prohibition of slavery and forced labor 1. No one shall be held in slavery or servitude. 2. No one shall be required to perform forced or compulsory labor [...].

434 ECHR, *Rantsev v. Cyprus and Russia*, para. 282.

established that "trafficking in human beings, by its very nature and aim of exploitation, is based on the exercise of powers attaching to the right of ownership. It treats human beings as commodities to be bought and sold and put to forced labor, often for little or no payments, usually in the sex industry but also elsewhere. It implies close surveillance of the activities of victims, whose movements are often circumscribed. It involves the use of violence and threats against victims, who live and work under poor conditions."[435]

288. The definitions contained in the aforementioned international treaties and the ECHR's interpretation in the Rantsev case leave no doubt that the concept of the slave trade and traffic in women has transcended its literal sense in order to protect, within current developments in international human rights law, people trafficked for the purposes of subjugating them to various forms of exploitation without their consent. The element that links the prohibition on trafficking in slaves and women is the control the perpetrators exercise over their victims during transport or transfer with the aim of exploitation. The Court identifies the following elements common to both forms of trafficking: i) control of a person's movement or physical environment; ii) psychological control; iii) adoption of measures to prevent escape, and iv) forced labor,[436] including prostitution.

289. Based on the above, the Inter-American Court observes that in the light of developments in international law in recent decades, the expression "slave trade and traffic in women" from article 6(1) of the American Convention must be interpreted broadly to be understood as "human trafficking." Given that slave trade and traffic in women have the goal of exploitation of the human being, the Court could not limit the protection conferred by this Article to women and said "slaves" alone, from the point of view of an interpretation more favorable to the human being and the *pro persona* principle.[437] This consideration is important in making the American Convention's prohibition effective according to the evolution of the concept of human trafficking in our current societies.

290. Therefore, the prohibition of "the slave trade and traffic in women" contained in Article 6(1) of the American Convention refers to:

> i) recruitment, transportation, transfer, harboring or receipt of persons;
>
> ii) resorting to threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a situation of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person. For people under the age of 18 these requirements are not a necessary condition for the characterization of trafficking;

[435] ECHR, *Rantsev v. Cyprus and Russia*, para. 281.
[436] ECHR, *Rantsev v. Cyprus and Russia*, para. 280.
[437] *Cf. Boyce et al. v. Barbados*, Preliminary Objection, Background, Reparations and Costs, Judgment of November 20, 2007, C169, para. 52, and *Wong Ho Wing v. Peru,* Preliminary Objections, Background, Reparations and Costs, June 30, 2015, C297, para. 126.

iii) any purpose of exploitation.[438]

B.6. Forced or compulsory labor

291. Regarding forced or compulsory labor, prohibited in Article 6(2) of the American Convention, the Court has already ruled on the content and reach of said regulation in *Masacres de Ituango vs. Colombia*.[439] In that ruling, the Court accepted the definition of forced labor contained in Article 2(1) of ILO Convention No. 29, which states that:

> the term forced or compulsory labor shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.

292. In that ruling, the Tribunal considered the definition of forced or compulsory labor to be made up of two basic elements: the work or service is demanded "under threat of punishment," and carried out involuntarily.[440] Also, given the circumstances of the case, the Tribunal considered that in order for an act to constitute a violation of Article 6(2) of the Convention, the alleged violation must be attributable to State agents, either through their direct participation or through their acquiescence to the facts.[441] The Court will proceed to examine the facts of the present case in light of those three elements of precedent.

293. Regarding the "threat of punishment," it can consist of, among other things, the real and actual presence of a threat which can assume different forms and degrees, of which the most extreme are ones that imply coercion, physical violence, isolation or confinement, as well as death threats directed at the victim or the victim's family.[442] "Unwillingness to perform the work or service" consists of the absence of consent or free will when the situation of forced labor begins or continues, and it can happen for distinct reasons, such as the illegal deprivation of liberty, deception or psychological coercion.[443] Regarding the link with State agents, the Court considers said criteria restricted to the obligation to respect the prohibition of forced labor, which was relevant in the *Masacres de Ituango* case because of its specific factual circumstances. But these criteria cannot be sustained when the alleged violation refers to the obligations of prevention and human rights guarantees established in the American Convention, consequently the attribution to State agents is not necessary to the naming of a situation as forced labor. In that respect, in the next section the Court will determine State obligations in the matter of the prohibition of slavery, involuntary servitude, human trafficking and forced labor.

B.7. Facts of the present case in light of international standards

438 This exploitation shall include, at a minimum, the exploitation of prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs. Palermo Protocol, Article 3. Expert testimony brief of Jean Allain, evidence file, pages 14986 and 14987.
439 *Cf. Masacres de Ituango*, paras. 155 to 160.
440 *Cf. Masacres de Ituango*, para. 160.
441 *Cf. Masacres de Ituango*, para. 160.
442 *Cf. Masacres de Ituango*, para. 161.
443 *Cf. Masacres de Ituango*, para. 164.

294. The Court will now examine the facts of the present case to determine if they correspond to some of the situations described in the above paragraphs. Once a determination has been made concerning what type of situation the alleged victims at Hacienda Brasil Verde were subjected to, the Court will expound upon which State obligations may have been violated in this case.

295. There is no dispute among the parties over the historical evolution of the phenomenon of slavery in Brazil, particularly in rural settings. Neither is there dispute over the accusations made by the CPT and other organizations beginning in the 1970s concerning the occurrence of "slave labor" in the north and northeast of the country, nor about Hacienda Brasil Verde specifically, beginning in 1988 and continuing until 2000 (*supra* paras. 110 to 115). The Court considers there to be no dispute with regard to State agents not participating actively or directly in the subjugation of workers in the alleged situation of "slave labor" at Hacienda Brasil Verde, but rather accepts that it was private third parties who did so.

296. Regarding the specific facts of the case alleged to be a violation of Article 6(1) of the American Convention, after thorough study of the case files and evidence presented by the parties in this litigation, the Court has established which facts are relevant, as detailed below.

297. During the month of February 2000, the *gato* known as "Meladinho" recruited dozens of workers in the Barras municipality in the state of Piauí, to work at the Hacienda Brasil Verde (*supra* para. 164).

298. In order to get to the Hacienda Brasil Verde, the recruited workers traveled approximately three days by bus, train and truck (*supra* para. 165). The workers also had to stay one night in a hotel located in the city of Xinguara, which left them indebted (*supra* para. 165).

299. When the workers arrived at the Hacienda Brasil Verde they handed over their employment registration cards to the supervisor, who then made them sign blank documents. The State was aware of this practice because of previous inspections (*supra* para. 166)[444]. Also, in the case of alleged victim Antônio Francisco da Silva, the managers changed the birth date on his employment registration card so that he would appear to be an adult and therefore able to work on the farm.

300. The workers' statements reveal that when they got to the farm they realized nothing the *gato* had promised them was true (*supra* para. 166). Their living and work conditions were degrading and unsanitary. The food they were served was insufficient and of poor quality. The water they consumed came from a small spring surrounded by overgrown vegetation; it was stored in inadequate containers and distributed in shared bottles (*supra* para. 167). The workday was long, lasting 12 hours or more every day except Sunday (*supra* para. 168).

301. All the food they consumed was recorded in notebooks so that it could then be discounted from their salaries, which increased their debts with the employer (*supra* para. 167). The workers were also made to work under orders and threats from the farm managers, all of whom carried firearms and kept the workers

[444] Among others, 8th Legal Labor Affairs Office Report 2357/2001, June 21, 2001, (evidence file, pages 1031 to 1036).

under permanent surveillance (*supra* para. 171). Because the workers were prevented from leaving the farm, they were obliged to ask the farm managers to buy whatever products they needed, which resulted in a commensurate deduction from their salary (*supra* para. 172).

302. The situation in which the workers found themselves created in them a deep desire to flee the farm. However, the surveillance they were under, together with the lack of income, the isolated location of the farm and the presence of wild animals in the vicinity, prevented them from returning home (*supra* para. 173). The Public Prosecutor characterized this situation as a "private prison system" (*supra* para. 179).

303. Upon reviewing the facts contained in the preceding paragraphs, it is notable that there was a system in place for recruiting laborers through fraud and deception. The Court also observes that the facts of the case point to the existence of a situation of debt bondage, given that from the moment the workers received an advance on their salary from the *gato,* and then received ridiculously low salaries from which amounts were deducted for food, medicine and other things, they began to run up a debt they could never pay back. What worsened this system of peonage was that the workers were subjected to grueling workdays under threat of violence and made to live in degrading conditions. Additionally, the workers did not have any way of getting themselves out of the situation because of: i) the presence of armed guards; ii) being forbidden to leave the farm before they paid off the debts they had acquired there; iii) the physical and psychological coercion on the part of the *gatos* and the security guards, and iv) fear of reprisals and of dying in the jungle if they escaped. All those conditions exacerbated the vulnerability of the workers, most of whom were illiterate, in addition to being from a region of the country very far away, unfamiliar with the vicinity around the Hacienda Brasil Verde and subjected to inhumane living conditions.

304. Based on the above, the Court finds that the workers rescued from Hacienda Brasil Verde were in a situation of debt bondage as well as being subjected to forced labor. Without prejudice to the above, the Tribunal considers the specific circumstances to which the 85 workers rescued on March 15, 2000 were subjected go beyond the extremes of debt bondage and forced labor, and meet the strictest requirements of the definition of slavery established by the Court (*supra* para. 272), in particular the exercise of the powers attaching to the right of ownership. Therefore the Court confirms that: i) the workers were effectively under the control of the *gatos*, farm managers, the farm's armed guards, and ultimately also of the farm owner; ii) in such a way that their individual liberty and autonomy were restricted; iii) without their free consent; iv) through the use of threats and physical as well as psychological violence, v) in order to exploit their forced labor in inhumane conditions. Likewise, the circumstances of Antônio Francisco da Silva and Gonçalo Luiz Furtado's escape and the risks they then confronted until they were able to file a formal complaint with the Federal Police demonstrate: vi) the vulnerability of the workers and vii) the environment of coercion that existed on the farm, which viii) did not allow them to alter their situation and recover their freedom. Because of all the above, the Court concludes that the situation proven to be in existence at Hacienda Brasil Verde in March of 2000 represented a situation of slavery.

305. Furthermore, taking into consideration the context of the present case with respect to the recruitment of workers by means of fraud, deception and false promises, from the poorest regions of the country toward farms in the states of Maranhão, Mato Grosso, Pará and Tocantins (*supra* para. 112), together with the expert testimony of Attorney General Raquel Elias Dodge during the public hearing of this case, who explained in great detail how human trafficking for the purposes of labor exploitation functions in Brazil, in addition to the notes from interviews of the workers rescued in the March 2000 inspection audit, the complaints filed by Antônio Francisco da Silva and Gonçalo Luiz Furtado which led to the aforementioned inspection audit, as well as the testimonies of Marcos Antônio Lima, Francisco Fabiano Leandro, Rogerio Felix Silva, and Francisco das Chagas Bastos Sousa, during in situ proceedings of this case, the Court considers it to be a proven fact that the workers rescued in March of 2000 were also victims of human trafficking.

306. In this case the representatives alleged that the factual situation and the circumstances present at Hacienda Brasil Verde in March of 2000 also represent constraints on the rights to legal personality, personal integrity, personal liberty, honor and dignity and to the freedom of movement and residence. The Tribunal notes that these allegations refer to the same facts that have been examined in light of Article 6 of the Convention. The Court observes that because of the multi-offensive character of slavery, submitting a person to slavery violates several rights individually, some to a greater or lesser degree, depending on the specific factual circumstances of each case. Without prejudice to the above, because of the specific and complex definition of the concept of slavery, when it comes to the verification of a situation of slavery, said rights are included in the Convention under Article 6. The Court observes that the examination of the violation of Article 6 of the Convention has already taken into consideration the elements alleged by the representatives as constraints on other rights, since in the factual analysis of the case the Court confirmed that the constraint on personal integrity and liberty (violence and threats of violence, physical and psychological coercion of the workers, restrictions on the freedom of movement), inhumane treatment (degrading living and workplace conditions, bad food) and the severe limitation on freedom of movement (restriction of movement because of debts and demands of forced labor), were elements that constitute slavery in this case, therefore it is not necessary to make an individual ruling regarding the other rights infringements alleged by the representatives.[445] They will however be taken into account when a determination is made concerning state responsibility in this case and as will be pertinent in ordering reparations.

B.8. Brazilian Criminal Law

307. The Court will now make a few observations regarding Brazil's plea that the circumstances identified at the Hacienda Brasil Verde only represent violations of labor rights under Brazilian law and that they would have possibly been characterized as a crime according to Article 149 of the Criminal

[445] *Cf. Fernández Ortega et al. v. Mexico*. Preliminary Objections, Background, Reparations and Costs, Judgment of August 30, 2010, C215, paras. 132, 150 and 202, and *Canales Huapaya at al. v. Peru*. Preliminary Objections, Background, Reparations and Costs, Judgment of June 24, 2015, C296, para. 114.

Code, but in no way could be characterized as slavery, involuntary servitude or forced labor under the relevant stipulations of international human rights law.

308. The Court examined the facts of the present case in light of international human rights law on the subject and concluded that the situation of the workers rescued in March of 2000 constituted an analogous form of slavery, prohibited by Article 6(1) of the American Convention (*supra* para. 241). The State's argument points out that the definition of the crime of reducing a person to slavery according to Article 149 of the Brazilian Criminal Code is too broad, purportedly incorporating elements not contemplated in international law. The Court has two main points to highlight in that regard.

309. First of all, it is important to clarify that the criminal definition in effect during the facts of this case simply declared: "Art. 149 – Reducing someone to a condition similar to slavery: Penalty – imprisonment for two to eight years." This wording had nothing to do with the new definition which came out of the 2003 reforms, which includes four categories analogous to the condition of slavery (forced labor, exhaustive workdays, degrading work conditions, restriction of movement based on debt owed to employer).[446] Therefore it is necessary to keep in mind that the criminal definition valid at the time of the facts of this case cannot be characterized as different from the prohibition in the American Convention, or "too broad," as the State suggests.

310. The jurisprudence of Brazilian superior courts presented to the Court during the proceedings of this case by the State, the representatives, declarants and expert witnesses all point to the fact that the fundamental element in determining the existence of a situation similar to slavery according to Brazilian courts before the 2003 reforms was the deprivation of a worker's freedom. The interpretation of the prohibition of slavery in the original Article 149 of the Penal Code requires the existence of a restriction of the victims' freedom, a fact which is confirmed in the present case because of there being real threats, violence and debt bondage at Hacienda Brasil Verde (*supra* para. 304). Likewise there was also proof of grueling workdays, degrading work conditions, falsification of documents and the presence of minors, all of which roundly contradicts the State's argument regarding the workers being free to leave the farm. Therefore, the State's argument that the facts must be considered only according to Brazilian legislation—and not on the basis of international law—has no merit.

[446] Reduction to a condition similar to slavery:
Art. 149. Reducing someone to a condition similar to slavery, or subjugating him to forced labor or an exhausting work day, or subjugating him to degrading work conditions, or restricting his movement in any way or due to debt acquired with the employer or his representative.
Penalty - imprisonment for two to eight years and a fine, plus a corresponding sanction for the violence.
1. The same penalties apply to those who:
I.- restrict the use of any kind of transport in order to keep the worker at the workplace.
II.- maintain continuous surveillance in the workplace or take possession of the workers' documents or personal possessions in order to keep them at the workplace.
2. The penalty will increase by half if the crime is committed:
I.- against a child or adolescent;
II.- for reasons of race, color, ethnicity, religion or origin.

311. Secondly, it is important to note that if a country adopts regulations that are more protective of human beings, as the prohibition of slavery in Brazilian law as of 2003 could be interpreted to be, the Court cannot restrict its analysis of a specific situation based on regulations which offer less protection. Such is the spirit of Article 29 of the American Convention:

> Article 29. Restrictions Regarding Interpretation
> No provision of this Convention shall be interpreted as:
> a) permitting any State Party, group, or person to suppress the enjoyment or exercise of the rights and freedoms recognized in this Convention or to restrict them to a greater extent than is provided for herein;
>
> b) restricting the enjoyment or exercise of any right or freedom recognized by virtue of another convention to which one of the said states is a party;
> c) precluding other rights or guarantees that are inherent in the human personality or derived from representative democracy as a form of government; or
> d) excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have.

312. The literal reading of section b) of Article 29 is a clear demonstration that the Convention does not allow an interpretation which limits the enjoyment and exercise of human rights[447]. The *pro persona* interpretation demands that the Court interpret human rights according to the American Convention in the most protective regulatory way possible, and then apply that interpretation to the people under its jurisdiction.

313. The Court also notes that a recent ruling from the Brazilian Supreme Court is in agreement with the Inter-American Court's ruling in the present case. Verdicts reached by both the Brazilian Superior Labor Court and the Supreme Court interpret situations similar to slavery in a responsible way, making it clear that a mere violation of labor law does not reach the threshold of a reduction to slavery, but rather the violations must be severe, ongoing and to the point of affecting the victim's self-determination. Here is how Minister Rosa Weber explained her vote in Special Appeal 459510/MT:

> "Obviously not every violation of labor law amounts to slave labor. However, if the offense to the rights guaranteed under current labor law is intense and persistent, if it reaches unbearable levels and if the workers are subjected to forced labor, exhaustive days or degrading conditions, it is possible, in theory, that a crime is being committed according to Article 149 of the Criminal Code, and that the workers are suffering treatment analogous to slavery, being deprived of their freedom and above all their dignity, including a restriction on their freedom of movement."[448]

447 *Cf. Apitz Barbera et al. ("Corte Primera de lo Contencioso Administrativo") v. Venezuela,* Preliminary Objections, Background, Reparations and Costs, August 5, 2008, C182, para. 218, and *Ruano Torres et al. v. El Salvador,* Background, Reparations and Costs, October 5, 2015, C303, para. 29.

448 "Por óbvio, nem toda violação dos direitos trabalhistas configura trabalho escravo. Contudo, se a afronta aos direitos assegurados pela legislação regente do trabalho é intensa e persistente, se atinge níveis gritantes e se os trabalhadores são submetidos a trabalhos forçados, jornadas exaustivas ou a condições degradantes, é possível, em tese, o enquadramento no crime do art. 149 do Código Penal, pois conferido aos trabalhadores tratamento análogo ao de escravos, com a privação de sua liberdade e sobretudo de sua dignidade, mesmo na ausência de coação direta contra a liberdade de ir e vir."

314. Based on the above, the Court does not consider that the State's argument about a broader protection according to Article 149 of the Brazilian Criminal Code can exempt the State from its responsibility in the present case.

B.9. State responsibility in the present case

315. Now that the situation of the workers at Brasil Verde Farm has been defined as a manifestation of slavery, the Court will examine whether there was State responsibility for these facts based on the American Convention.

316. As it has done on other occasions, the Court reiterates that it is not enough for States to abstain from violating rights, but instead it is imperative that they adopt positive measures with a clear function to protect the specific needs of the subjects of the law, whether for their personal circumstances or for the specific situation in which they find themselves[449].

317. Likewise, the prohibition against being subjugated to slavery plays an essential role in the American Convention, because it represents one of the most fundamental violations of the dignity of a human being and, concomitantly, of various rights guaranteed in the Convention (*supra* para. 306). States have the obligation to guarantee the creation of conditions required so that there may be no violations of this inalienable right and, in particular, the obligation to prevent their agents and private third parties from infringing upon that right. The observance of Article 6 as it relates to Article 1(1) of the American Convention not only presupposes that no one be subjected to slavery, involuntary servitude, trafficking or forced labor, but it also requires that the States adopt all appropriate measures to put an end to said practices and prevent the violation of the right not to be subjected to said conditions, in accordance with the duty to guarantee the full and free exercise of the rights of every person under their jurisdiction.[450]

318. Moreover, given the increased number of victims of slavery, human trafficking and involuntary servitude who continue to be liberated by Brazilian authorities, and because of a change in perspective regarding these modern forms of slavery as "the last links in the supply chain of a global economy,"[451] it is important that the State adopt methods of deterring the demand that feeds work exploitation, whether forced labor, involuntary servitude or slavery.[452]

319. Concerning the obligation to guarantee the right to work recognized in Article 6 of the American Convention, the Court considers that it implicates the State's duty to prevent and investigate possible situations of slavery, involuntary servitude, trafficking of persons and forced labor. Among other measures, the States have the obligation to: i) launch official, immediate and effective investigations in order to identify, adjudicate and sanction responsible parties, whenever there is a formal complaint or

[449] *Massacre at Pueblo Bello v. Colombia,* Background, Reparations and Costs, January 31, 2006, C140, para. 111, and *Wong Ho Wing v. Peru*. Preliminary Objection, Background, Reparations and Costs, June 30, 2015, C297, para. 128.
[450] *Cf.* Case of *Masacre de Pueblo Bello*, para. 120, and *Rodríguez Vera et al. (Desaparecidos del Palacio de Justicia)*, para. 518.
[451] See expert testimony of Jean Allain, (evidence file, page 14921).
[452] See United Nations Guiding Principles on Business and Human Rights, UN Human Rights Council, Resolution No. 17/4, U.N. Doc. A/HRC/RES/17/4, July 6, 2011.

justified reason for believing that people under their jurisdiction are being subjected to one of the circumstances spelled out in Articles 6(1) and 6(2) of the Convention; ii) eliminate all legislation that legalizes or tolerates slavery and servitude; iii) criminally define those circumstances, with severe sanctions; iv) carry out inspections or other methods for identifying said practices; and v) adopt measures of protection and support for the victims.

320. All of the foregoing makes clear that the States must adopt comprehensive measures to comply with the due diligence required in cases of involuntary servitude, slavery, human trafficking and forced labor. In particular, the States must have an adequate framework of legal protection, an effective way to apply it, as well as preventive policies and practices that can be carried out efficiently when allegations are made. The strategy of prevention must be comprehensive, that is, it must prevent risk factors while at the same time strengthen institutions so that the States can respond effectively to the phenomenon of modern slavery. Likewise, the States must adopt preventive measures in specific cases where it is evident that certain groups of people are prone to being victims of trafficking or slavery. This obligation is reinforced by the mandatory nature of international law prohibiting slavery and servitude (*supra* para. 249) and by the gravity and intensity of the rights violations by that practice.

321. It is now up to the Court to examine whether the State adequately prevented the situation of slavery verified in the present case. That is, did the State comply with the duty to guarantee in Article 6 of the American Convention, in accordance with Article 1(1) thereof. The determination of the victims' right to legal access will be examined in the chapter related to Articles 8(1) and 25(1) of the American Convention, in relation to Articles 1(1) and 2 thereof.

B.10. Duty of prevention and non-discrimination

322. The Court has established that the duty of prevention encompasses any measures of a legal, political, administrative or political character which promote the safeguarding of human rights and which assure that the eventual violations thereof are effectively evaluated and treated as illicit acts and, as such, make the person who committed them susceptible to sanctions, in addition to the obligation to compensate the victims for deleterious consequences. It is clear that the duty of prevention is behavioral and its breach cannot be demonstrated by the mere fact of a right being violated.[453]

323. According to this Court's precedent, it is clear that a State cannot be responsible for any violation of human rights committed between private parties within its jurisdiction. The conventional obligations of guarantee on the part of the States do not imply an unlimited State responsibility in the face of every private infraction. The State's duty to adopt measures of prevention and protection of individuals and the relations between them are conditional on the knowledge of a situation of real and immediate risk to an individual or a specific group of individuals and the reasonable possibilities of avoiding said risk. That is, even if an act or omission on the part of an individual has as its legal consequence the violation of specific

[453] *Cf.* Velásquez Rodríguez v. Honduras. Background, para. 166; Velásquez Paiz et al. v. Guatemala. Preliminary Objections, Background, Reparations and Costs, November 19, 2015, C307, para. 107.

human rights of another individual, that act or omission is not automatically attributable to the State, since it must be addressed in terms of the particular circumstances of the case and the precision to said obligations of guarantee.[454]

324. Regarding this particular case, however, the case law of this Tribunal has determined that in order to demonstrate State responsibility it must be established whether "in the moment the facts occurred, state authorities knew or should have known of the existence of a situation that represented a real and immediate risk to the life of an individual or group of individuals, and did not adopt necessary measures within the realm of their authority to prevent or avoid said risk."

325. In this case the Court confirmed a series of failures and negligence on the part of the State regarding its prevention of the occurrence of involuntary servitude, human trafficking and slavery within its borders before the year 2000, but also as of the formal complaint made by the adolescents named Antônio Francisco da Silva and Gonçalo Luiz Furtado.

326. Since 1988, the Pastoral Land Commission (CPT) has made several formal complaints concerning the existence of situations similar to slavery in the state of Pará, and specifically at the Hacienda Brasil Verde. Those complaints identified a *modus operandi* of recruitment and exploitation of workers in the specific region of southern Pará. The State had knowledge of this situation, because as a result of said formal complaints, inspections were made of Hacienda Brasil Verde in 1989, 1992, 1993, 1996, 1997, 1999 and 2000. Several of those inspections confirmed violations of labor laws, degrading living and work conditions, as well as situations similar to slavery. These confirmations led to the opening of criminal and labor proceedings, but they were not effective in preventing the situation verified in March of 2000.[455] Additionally, given the frequent formal complaints, the gravity of the reported facts, and the special obligation of prevention imposed upon the State with respect to slavery, the State should have intensified inspections of the farm in question, in an effort to eradicate the practice of slavery there.

327. Moreover, in addition to the risk already detailed above, the situation of real and present danger was verified once Antônio Francisco da Silva and Gonçalo Luiz Furtado succeeded in escaping from Hacienda Brasil Verde and appeared before the Federal Police in Marabá. When the police officer received the adolescents' formal complaint concerning crimes occurring on the farm, Antônio Francisco da Silva's condition, and the gravity of the allegations, the police officer's only response was to say to the boys that the police could not attend to their case because it was Carnival, and he advised them to come back in two days. Such an attitude was in direct contradiction of the obligation of due diligence, even more so when the allegations being reported had to do with a crime as serious as slavery. Upon receiving notice of the occurrence of slavery and of violence against a minor, the State had the duty to deploy all its resources to

[454] *Cf.* Case of *Massacre at Pueblo Bello*, para. 123, and *Velásquez Paiz at al.*, para. 109. See also ECHR, *Kiliç v. Turkey*, No. 22492/93, March 28, 2000, paras. 62 and 63, and ECHR, *Osman v. United Kingdom*, No. 23452/94, October 28, 1998, paras. 115 and 116.

[455] Detailed examination of these proceedings will be made in the next chapter; for now note is made that said initiatives were insufficient and did not result in holding anyone accountable.

confront such human rights violations. Proceeding in the opposite direction violated the State's duty to prevent the occurrence of slavery within its territories.

328. Even though the State had full knowledge of the risk faced by the workers subjected to slavery or forced labor in the State of Para[456] and specifically at Hacienda Brasil Verde,[457] it did not show that it had adopted effective measures of prevention prior to March 2000 regarding specific prevention of the already-identified practices of subjugating human beings to degrading and inhumane conditions. Even though the duty of prevention is one of means and not results, the State has not shown that public policies adopted between 1995 and 2000 and the previous inspections made by officials from the Ministry of Labor, although necessary and proof of state commitment, were sufficient and effective in preventing the subjugation of 85 workers to slavery at Hacienda Brasil Verde (first instance of the duty of prevention). Likewise, upon receiving the formal allegation of violence and subjugation to slavery, the State did not react with required due diligence in light of the severity of the facts, of the situation of the victims' vulnerability and of its international obligation to prevent slavery (second instance of the duty of prevention after the two formal complaints were made).

B.11. Rights of the Child

329. Furthermore, from facts related to the March 2000 inspection, the Court observes that Antônio Francisco da Silva, who fled the farm and then after much effort managed to report the existence of slavery, threats and violence at Hacienda Brasil Verde, was a child at that point in time (*supra* paras. 174, 175 and 299). Antônio Francisco da Silva declared before the Court that he made this allegation to the federal police and to the CPT.

330. The Court points out that children are holders of the rights established in the American Convention, in addition to relying on special methods of protection spelled out in Article 19 of the Convention, which shall be defined according to the specific circumstances of each case.[458] Article 19 of the Convention establishes the obligation to adopt special methods of protection on behalf of every child because of their condition as minors, which radiate its effects through the interpretation of all other rights in cases involving minors. In this way, the Court has considered that the required protection of the rights of children, in their capacity as legal subjects, must take into account their particular characteristics and the imperative to promote their development, offering them the conditions necessary for them to live and grow with full use of their potential.[459] In order to define the content and reach of the obligations assumed

[456] See, among others, Presidential Declaration of Fernando Henrique Cardoso, July 27, 1995 (evidence file, page 7108).
[457] See 8th Legal Labor Affairs Office Chief Attorney's Report No. 2.357/2001, June 21, 2001 (evidence file, pages 1031 to 1036).
[458] *Gelman v. Uruguay*. Background and Reparations, February24, 2011, C 221, para. 121, and *Expelled Dominicans and Haitians v. Dominican Republic.* Preliminary Objections, Background, Reparations and Costs, August 28, 2014, C282, para. 269.
[459] *Cf.* Legal Condition and Human Rights of the Child. Advisory Opinion 17/02, August 28, 2002, A17, para. 61; Rights and Guarantees of Children in the context of migration and/or in need of international protection. Advisory Opinion 21/14, August 19, 2014, A21, para. 66, and Case of *Rochac Hernández*, para. 106.

by the State when analyzing the rights of the child, the Court will once again turn to the international *corpus juris* of protections for children.[460]

331. The regulations contained in the Convention on the Rights of the Child and ILO Conventions 138 and 182[461] incorporate the *corpus juris* into their declarations. Article 32 of the Convention on the Rights of the Child expects States Parties to recognize the right of children to be protected against economic exploitation and against performing any kind of work that could be dangerous or a hindrance to their education, or that could be harmful to their health or physical, mental, spiritual, moral or social development. The same precept indicates that States Parties must fix a minimum age for working. Article 3 of ILO Convention No. 138 also indicates that the minimum working age for every kind of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardize the health, safety or morals of young persons shall not be less than 18 years. In this same way, ILO Convention No. 182 stipulates that all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labor, including work which by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children, are considered the worst forms of child labor.[462]

332. Therefore, the Court points out that the State's obligations to adopt methods for eliminating the worst forms of child labor are of utmost importance and must include, among other things, the creation and implementation of programs of action to assure children's full exercise and enjoyment of their rights.[463] Specifically, the State has the obligations to: i) prevent the engagement of children in the worst forms of child labor; ii) provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labor and for their rehabilitation and social integration; iii) ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children that have been freed from the worst forms of child labor; iv) identify and reach out to children at special risk, and v) take account of the special situation of girls.[464]

333. The facts in this case leave no doubt that Antônio Francisco da Silva was subjected to forms of labor indicated above, in addition to having been determined previously to have been a victim of slavery. Therefore, once the real situation of violence and slavery to which the child was subjected became known, and the possibility that other children were in the same circumstance, together with the gravity of the facts in question, the State should have adopted effective methods for putting an end to his situation of actual slavery and for ensuring the rehabilitation and social integration of Antônio Francisco da Silva, along with providing him access to basic education and, if possible, vocational training.

460 *Cf. "Niños de la Calle" (Villagrán Morales et al.) v. Guatemala*. Background, para. 194, and *Rochac Hernández et al.*, para. 106.
461 ILO Convention No. 138 concerning minimum age for admission to employment (Effective June 19, 1976); Convention No. 182, preamble and Article 3.
462 ILO Convention No. 182, Article 3.
463 Convention on the Rights of the Child, Articles 7, 8, 9, 11, 16, 18 and 32.
464 ILO Convention No. 182, Article 7.

B.12. Structural discrimination

334. Regarding structural discrimination, the Court notes the inclusion of the alleged violation of Article 24 of the Convention (Equality Before the Law) in the final plea briefs from the representatives, without there having been any plea or explanation for this inclusion and change of position. In this way, the Court recalls that while the general obligation of Article 1(1) refers to the State's duty to respect and guarantee "without discrimination" the rights contained in the American Convention, Article 24 protects the right to "equal protection of the law."[465] That is to say, Article 24 of the American Convention prohibits discrimination de jure or de facto, not only as it regards rights contained in said treaty, but also with respect to all the laws the State approves and its application.[466] In other words, if a State discriminates in respect to or in guarantee of a conventional right, it would breach the obligation established in Article 1(1) as well as the very law in question. If, on the other hand, the discrimination refers to an unequal protection of domestic law or its application, the fact must be examined in light of Article 24 of the American Convention[467] in relation to the categories protected in Article 1(1) of the Convention.

335. Additionally, the Court has established that Article 1(1) of the Convention is a general rule whose content extends to every provision of the treaty, laying out the obligations of the States Parties to respect and guarantee the full and free exercise of rights and freedoms recognized therein as "without any discrimination." That is to say, whatever the origin or form it assumes, any and all treatment that could be considered discriminatory with respect to the exercise of any of the rights guaranteed by the American Convention is by its very nature incompatible with the Convention.[468] State non-compliance, through any sort of discriminatory treatment, with the general obligation to respect and guarantee human rights, exposes it to international responsibility.[469] For this reason there is an indissoluble bond between the obligation to respect and guarantee human rights and the principle of equality and non-discrimination.[470] In that respect, the Court points out that in contrast to other treaties on human rights, the "economic status" of a person is one of the grounds of discrimination prohibited by Article 1(1) of the American Convention.

336. The Court has noted that "the States must abstain from taking actions of any kind that, directly or indirectly, go toward the creation of discriminatory situations both *de jure* and *de facto*".[471] States are obligated to "adopt positive measures to revert or change existing discriminatory situations in their societies, ones causing detriment to a specific group of people. This implies the special duty of protection

[465] *Cf.* Proposal to amend the Political Constitution of Costa Rica as relates to naturalization. Advisory Opinion 4/84, January 19, 1984, A4, paras. 53 and 54, and *Duque v. Colombia*. Preliminary Objections, Background, Reparations and Costs, February 26, 2016, C310, para. 94.
[466] *Cf. Yatama v. Nicaragua*. Preliminary Objections, Background, Reparations and Costs, June 23, 2005, C127, para. 186, and Case of *Duque*, para. 94.
[467] *Cf. Apitz Barbera et al. ("Corte Primera de lo Contencioso Administrativo")*, para. 209, and Case of *Duque*, para. 94.
[468] *Cf. Proposal to Amend the Political Constitution of Costa Rica as Relates to Naturalization,* para. 53; and the Case of *Duque*, para. 94.
[469] *Cf. Juridical Condition and Rights of undocumented UMigrants*. Consultive Opinion 18/03, September 17, 2003, A18, para. 85; and the Case of *Duque*, para. 94.
[470] *Cf. Juridical Condition and Rights of undocumented UMigrants,* para. 85, and the Case of *Duque*, para. 94.
[471] *Cf. Juridical Condition and Rights of undocumented UMigrants*, para. 103, and the Case of *Duque*, para. 92.

the State must exercise with respect to the actions and practices of third parties who, under State tolerance and acquiescence, create, maintain or favor discriminatory situations."[472]

337. The Court has ruled on the matter of establishing that every person found to be in a situation of vulnerability is entitled to special protection, because of the special duties the State must fulfill in order to satisfy its general obligations to respect and guarantee human rights. The Tribunal reiterates that it is not enough that the States abstain from violating rights, but rather it is imperative that they adopt positive measures, which are determinable in their function to protect the particular needs of their legal subjects, whether for their personal condition or for the specific situations in which they find themselves,[473] such as extreme poverty or marginalization.[474]

338. The Court considers that the State incurs international responsibility in those cases where structural discrimination exists and it adopts no specific measures regarding the specific situation of victimization where vulnerability has been determined to apply to a circle of individuals. Their very victimization demonstrates their vulnerability, which demands its own specific protective action, which was omitted in the case of the workers rescued from Hacienda Brasil Verde.

339. The Court confirms, in this case, some specific characteristics of victimization shared among the 85 workers rescued on March 15, 2000: they were found to be living in poverty; they came from the poorest regions of the country, with the least human development and employment prospects; they were illiterate and had little to no formal education (*supra* para. 41). All of the foregoing put them in a situation which made them more susceptible to being recruited through false promises and deception. Said situation of real, immediate risk for a particular group of people with identical characteristics and from the same parts of the country, has historical origins and was known at least since 1995, when the Brazilian government expressly recognized the existence of "slave labor" in the country (*supra* para. 111).

340. Information in a manual put out by the Ministry of Labor and contained in this case's evidence file warns of the existence of a situation with the hallmarks of discriminatory treatment based on the economic status of the victims rescued on March 15, 2000. According to various ILO and Brazilian Ministry of Labor reports, "the miserable situation of the worker is what leads him to spontaneously

472 *Cf. Juridical Condition and Rights of undocumented UMigrants,* para. 104, and the Case of *Duque*, para. 92.
473 *Cf. "Massacre at Mapiripán" v. Colombia*, September 15, 2005, C134, paras. 111 and 113, and Case of *Chinchilla Sandoval*, para. 168.
474 *Cf. Indigenous Community of Sawhoyamaxa v. Paraguay*. Background, Reparations and Costs, March 29, 2006, C146, para. 154. In a similar way the Court has also expressed that "States must take into account that there are groups of people who live in adverse conditions and with fewer resources, such as people who live in extreme poverty, children and adolescents in dangerous situations, as well as indigenous populations, who confront increased risks because of suffering from mental disabilities [...]. There is a direct and significant link between disability on the one hand and poverty and social exclusion on the other. Therefore, among the positive measures the State is responsible for are the ones necessary for the prevention of all forms of preventable disabilities, in addition to giving people who suffer mental disabilities the treatment which is preferred and appropriate to their condition".. *Ximenes Lopes v. Brasil*. July 4, 2006, C149, para. 104. In the Xákmok Kásek case the Court observed that "extreme poverty and lack of adequate medical attention for pregnant and postpartum women are causes of high maternal mortality and morbidity." *Indigenous Community of Xákmok Kásek v. Paraguay*. Background, Reparations and Costs, August 24, 2010, C214, para. 233.

accept the work conditions offered",[475] because "the poorer their living conditions, the more willing the workers are to face the risks of working far from home. Poverty, then, is the main factor of modern slavery in Brazil, because it heightens the vulnerability of a significant part of the population and makes them easier prey for the recruiters who lure them into slave labor.[476]

341. Having confirmed the situation outlined above, the Court observes that the State did not consider the vulnerability of the 85 workers rescued on March 15, 2000, by virtue of the discrimination they suffered because of the economic situation to which they were subjected. The above constitutes a violation of Article 6(1) of the American Convention, in relation to Article 1(1) of the same instrument, to the detriment of the workers.

B.13. Conclusion

342. In light of all the above, Brazil did not show that it had adopted specific measures, with respect to this case and at the time the stated facts occurred, in accordance with the already-known circumstances of the workers in a situation of slavery and of the concrete allegations made against Hacienda Brasil Verde, to prevent the occurrence of the violation of Article 6(1) confirmed in this case. The State did not act in a timely manner during the first hours and days after the formal complaint made by Gonçalo Luiz Furtado and Antônio Francisco da Silva, at great personal risk and sacrifice to themselves, but instead let valuable hours and days go by while it did nothing. In the period between the formal complaint and the inspection, the State did not succeed in coordinating the Federal Police's active participation in the aforementioned inspection, beyond the protective function of the Ministry of Labor's team. All of this shows that the State did not act with required due diligence to adequately prevent the modern form of slavery confirmed to be present in this case, nor did it act as could reasonably be expected in the circumstances of this case to put an end to this type of violation. This breach of the duty to guarantee is particularly serious given the situation known by the State and the obligations imposed upon it by Article 6(1) of the American Convention and especially the ones derived from the *jus cogens* characteristic of this prohibition.

343. Because of everything aforementioned, the Tribunal rules that the State violated the right not to be subjected to slavery and human trafficking in violation of Article 6(1) of the American Convention on Human Rights, in relation to Articles 1(1), 3, 5, 7, 11 and 22 of the same instrument, to the detriment of the 85 workers rescued on March 15, 2000, at Hacienda Brasil Verde, the names of whom are listed in paragraph 206 of this Judgement. Additionally, regarding Antônio Francisco da Silva, this violation also occurred in relation to Article 19 of the American Convention, because he was a child at the time the events occurred. Finally, Brazil is responsible for the violation of Article 6(1) of the American Convention, in relation to Article 1(1) of the same instrument, produced in the context of a situation of

[475] Ministry of Labor and Employment. *Manual for Combatting Work in Conditions Analogous to Slavery*, 2001, p. 13 (evidence file, page 6714).
[476] ILO– Brazil. Combatting modern slave labor: the Brazil example, 2010, p. 2010 (evidence file, page 8529).

historical and structural discrimination due to the economic status of the 85 workers identified in paragraph 206 of this Judgment.

VIII-2.
RIGHTS TO A FAIR TRIAL[477] AND JUDICIAL PROTECTION[478]

344. In this chapter the Court will analyze the arguments presented by the parties and will develop considerations of pertinent law related to the alleged infringements on rights to a fair trial and judicial protection. To that end, the court will conduct an analysis in the following order: a) alleged lack of due diligence; b) alleged infringement of reasonable time limits in the criminal proceedings, and c) alleged absence of effective judicial protection. The Court will also consider the investigations of the alleged forced disappearances of Iron Canuto da Silva and Luis Ferreira da Cruz.

A. Motions of the parties and the Commission

345. The **Commission** considered that the State is responsible for not adopting measures to safeguard judicial guarantees within a reasonable time frame. In that regard, the Commission noted that the State is responsible for the violation of Article 8 of the Convention, because it failed in its duty to prevent and investigate slave labor, in spite of knowing of its existence at Hacienda Brasil Verde since 1988, through the formal complaints filed, and it was not diligent in determining responsibility for the facts.

[477] Article 8. Right to a Fair Trial.
1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.
2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:
a) the right of the accused to be assisted without charge by a translator or interpreter, if he does not understand or does not speak the language of the tribunal or court;
b) prior notification in detail to the accused of the charges against him;
c) adequate time and means for the preparation of his defense;
d) the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel;
e) the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law;
f) the right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts;
g) the right not to be compelled to be a witness against himself or to plead guilty; and
h) the right to appeal the judgment to a higher court.
3. A confession of guilt by the accused shall be valid only if it is made without coercion of any kind.
4. An accused person acquitted by a nonappealable judgment shall not be subjected to a new trial for the same cause.
5. Criminal proceedings shall be public, except insofar as may be necessary to protect the interests of justice.

[478] Article 25. Right to Judicial Protection.
1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.
2. The States Parties undertake:
a) to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;
b) to develop the possibilities of judicial remedy; and
c) to ensure that the competent authorities shall enforce such remedies when granted.

346. The Commission noted that the criminal proceedings, which started in June of 1997 and culminated in 2008, were characterized by structural forces of impunity, namely: i) the existence of an unjustified delay caused by jurisdictional conflicts between federal and state levels, whose procrastination lasted almost 10 years; ii) the absence of real will to investigate with due diligence; iii) the option given the farm owner of suspending the legal proceedings against him in exchange for his donation of a basket of basic foodstuffs to the victims; and iv) honoring statutes of limitations, even though the slavery and forced labor behaviors constitute grave violations of human rights which, according to Court jurisprudence, must not be subject to such time limits.

347. The Commission also considered that the State is responsible for the violation of Article 25 of the Convention, because despite the State having knowledge of the current situation at Hacienda Brasil Verde since 1989, the victims could not rely on effective judicial mechanisms for the protection of their rights, the sanction of responsible parties and the procurement of reparations; because a full and effective investigation was not carried out to clarify responsibility for the facts, and there was not a guarantee of effective legal resources to protect the workers against acts that violated their rights. The Commission added that the situation of prevailing impunity in this case persists until now.

348. The Commission argued that the State did not guarantee access to justice, the determination of truth in the evidence, investigation and sanction of responsible parties, or reparations or consequences as a result of violations.

349. The Commission also alleged that there were examples in this case of concrete actions in the access to justice which fall within the framework of structural discrimination; not only were no criminal proceedings initiated when labor irregularities were found, but rather when a labor investigation was opened what resulted was a conciliatory agreement with the owner of the farm, without any consideration given to the victims; and in said agreement the authorities pointed out that if the accused were to return to engaging in slave labor, he would have to pay a fine for each worker, whether "black or white."

350. Finally, the Commission noted that a statute of limitations for subjugating a person to slave labor is incompatible with the international obligations of the Brazilian State, and that the application of domestic regulations which allow for a statute of limitations on this crime cannot continue to be an obstacle to an investigation into the facts and the punishment of responsible parties. Therefore, the Commission indicated that the State was responsible for the violation of Articles 8(1) and 25(1), in relation to Articles 1(1) and 2 of the American Convention.

351. The **representatives** noted that the Brazilian State is responsible for violating the right to judicial protection provided for in Article 8 of the Convention, to the detriment of the people who worked at Hacienda Brasil Verde, because in spite of having knowledge of the existence of acts constituting the reduction of laborers to conditions similar to slavery, it failed in its duty to investigate the acts within a reasonable time frame. They also allege that the State did not act with the urgency the case merited, in order to remove the victims from the criminal situation in which they found themselves.

352. The representatives also pointed out that after 18 years there remains absolute impunity with respect to the facts of the formal complaints, given that the State failed to comply with its obligation to investigate serious violations of human rights within a reasonable time frame; and therefore is internationally responsible for the "continuous violation" of the judicial guarantees protected in Article 8 of the Convention, to the detriment of the people found to be working at Hacienda Brasil Verde on December 10, 1998. The representatives also noted that the State did not comply with the requirements of officiousness and thoroughness as a duty to guarantee due diligence.

353. The representatives noted also that the Brazilian State is responsible for violating judicial guarantees set forth in Article 25 of the Convention, to the detriment of the people found to be working at Hacienda Brasil Verde, in failing in its duty to investigate diligently and thoroughly all the facts in a timely and immediate manner. They also indicated that the victims did not receive any sort of protection in terms of their physical security, nor were they guided by the authorities in order to receive comprehensive assistance. The representatives noted that the victims had not participated at all in the process, and therefore had no way to assert their rights.

354. The representatives also alleged that contemporary forms of slavery are serious violations of human rights, whose absolute prohibition under international law is a standard of *jus cogens*, inadmissible to statutes of limitations provisions. According to the representatives, the facts remain in impunity, due in large part to the statute of limitations for the crimes for which a criminal prosecution could have been opened.

355. Additionally, the representatives indicated that the authorities' failure to take effective action in the face of the formal complaints and the recurrence of the facts reported show evidence a situation of structural discrimination in the State's response, which permitted the perpetuation of a situation that exploited a certain group of people. Lastly, the representatives alleged that the State had a duty to act and investigate with urgent diligence, because the authorities knew there might be children and adolescents working at Hacienda Brasil Verde.

356. The **State** alleged that the Commission did not clearly and specifically indicate what constitutes a violation of the obligation to observe judicial guarantees, and added that the eventual failure of the investigation and prosecution in the criminal matter should not be a matter of State responsibility.

357. Furthermore, the State noted that it acted with due diligence during the various investigative audit visits to Hacienda Brasil Verde, and that in said audits the state agents carried out their functions in an adequate manner and determined that no configuration of slave labor or slave conditions could be found.

358. On the other hand, the State did indicate that there were reasons justifying the delay in the criminal proceedings initiated in 1997 and that they were due to special complexities, such as that the accused lived in cities far from where the criminal proceedings were instituted, the authorities did not know where Quagliato Neto lived, the geographic distance complicated the gathering of evidence and the "absolute

legal uncertainty" concerning the competence of the jurisdiction to prosecute the crime of reduction to conditions analogous to slavery.

359. The State noted that the investigative procedures undertaken by the Public Prosecutor are adequate and effective instruments for criminal investigation and prosecution. It indicated that none of the audit inspections carried out at Hacienda Brasil Verde led to the conclusion that slave labor existed there, and that the administrative infractions they verified, such as degrading conditions and grueling workdays, could not be characterized as crimes according to the regulations in place at the time of the facts.

360. Finally, the State alleged that the Public Prosecutor has the jurisdiction to lead autonomous procedures of criminal investigation, as in the present case, and that said procedures must also be considered adequate and effective recourse for the investigation of crimes that represent violations of the American Convention.

B. The Court's Findings

361. Before beginning an examination of the pleas, the Court reiterates that its contentious jurisdiction in this case is limited to the judicial actions that have begun on or have continued after the recognition of jurisdiction formalized by the State on December 10, 1998. The procedures which occurred in 1989, 1992, 1993 and 1996 will not be part of the Court's analysis because they were concluded before the State recognized this Court's jurisdiction, notwithstanding their ability to be taken into account as context. In this chapter the Court will examine the actions which took place after December 10,1998: i) in Criminal Proceeding No. 1997.39.01.831-3 and the Public Civil Action, initiated in 1997, regarding the inspection on March 10, 1997; ii) proceedings initiated because of the inspection on March 15, 2000.

B.1. Due Diligence

362. The Court once again points out that because the protection against slavery and its analogous forms is an international obligation *erga omnes*, derived "from the principles and rules relating to the basic rights of the human person" (*supra* para. 249), when the States have knowledge of an act which constitutes slavery, involuntary servitude or human trafficking, in the terms set out in Article 6 of the American Convention, they must initiate e*x officio* the pertinent investigation with the aim of establishing the individuals responsible for it.[479]

363. In the present case the State had a duty to act with due diligence, which kept increasing because of the gravity of the facts of the formal complaints registered and the nature of the obligation; it was incumbent upon the State to act diligently in order to prevent the facts from remaining in a situation of impunity, as occurred in this case.

[479] *Cf. Massacres at Río Negro*, para. 225.

364. The Court reiterates that in the present case there existed an exceptional obligation of due diligence because of the particular situation of vulnerability in which the workers at Hacienda Brasil Verde found themselves and because of the extreme seriousness of the content of the formal complaints registered with the State; and for that reason it was imperative that the State take necessary measures toward avoiding bureaucratic and procedural delays, such that a prompt resolution and execution of the matter could be guaranteed.[480] In this regard the European Court has also indicated that a special due diligence is required in those cases where the integrity of a person is at risk, and it has noted that there is a positive obligation to penalize and investigate whatever situation exists for the purpose of maintaining a person in a situation of slavery, involuntary servitude or forced labor.[481] Furthermore, the Court has established that the obligation to investigate human trafficking must not depend on a formal complaint, but rather that once the authorities have knowledge of the situation they must take official action. Finally, it has been noted that the requirement of due diligence is implicit in all cases, but when there is the possibility of rescuing people from such a situation as is alleged in this case, the investigation must be undertaken urgently.[482]

365. In order to consider due diligence, the Court will briefly restate the actions in the criminal proceedings: on March10, 1997, José da Costa Oliveira and José Ferreira dos Santos rendered a statement before the Federal Police Department of Pará, Marabá branch office, in which they related having worked on and escaped from Hacienda Brasil Verde (*supra* para. 143). As a consequence of the Ministry of Labor's report, on June 30,1997, the Federal Public Prosecutor filed a criminal charge against Raimundo Alves de Rocha, Antônio Alves Vieira and João Luiz Quagliato Neto (*supra* para. 145). On September 23, 1999, at the Public Prosecutor's request, the federal judge authorized a two-year conditional suspension of the proceedings against João Luiz Quagliato Neto (*supra* para. 153). On March 16, 2001, the acting federal judge in charge of the case declared the absolute lack of jurisdiction of the Federal Justice System to rule on the proceedings (*supra* para. 155). On August 8, 2001, the proceedings were resumed by the state judiciary of Xinguara, and on October 25, 2001, the Prosecutor's office ratified the indictment. Subsequently, on May 23, 2002, the judge accepted the indictment. On November 8, 2004, the state judicial system declared itself incompetent to try the criminal proceedings, which created a conflict of jurisdictions. On September 26, 2007, the Superior Court of Justice issued its decision that the competent jurisdiction was at the federal level. On December 11, 2007, it remitted the case file to the federal judicial body of Marabá, Pará (*supra* para. 159).

366. On July 10, 2008, in a court ruling, a federal judge of Pará declared that, taking into account that more than 10 years had passed since the first complaint was filed, that the maximum applicable penalty was eight years and the statute of limitations was 12 years, only in the case of the accused being sentenced to the maximum time would the statute of limitations not have expired. In that regard, the judge stated that it was quite improbable that they would receive such a sentence because the statute of

480 *Cf. Gonzales Lluy et al*, para. 311.
481 ECHR, *Siliadin v. France*. No. 73316/01, July 26, 2005, para. 112, and *Rantsev v. Cyprus and Russia*. No. 25965/04, January 7, 2010, para. 285.
482 TEDH, ECHR, *Rantsev v. Cyprus and Russia*. No. 25965/04, January 7, 2010, para. 288, and *C.N. v. United Kingdom*. No. 4239/08, November 13, 2012, para. 69.

limitations would be inevitable. Based on the foregoing, as well as the lack of action on the part of the State, criminal policy and procedural economy, the judge declared the criminal case against Raimundo Alves da Rocha and Antônio Alves Vieira to be closed (*supra* para. 161).

367. The Court finds that there was a delay in the course of those proceedings, and that the jurisdictional conflicts and the lack of diligent action on the part of the legal authorities caused procrastination in the criminal proceedings. This Tribunal considers the State not to have shown justification for the inaction of the legal authorities, the long stretches of time without any actions being taken, the prolonged delay of the criminal proceedings, nor for the impediments caused by jurisdictional conflicts. Therefore, the Court finds that the legal authorities did not attempt in a diligent way to reach a resolution in said criminal proceedings.

368. Taking into account: i) in the present case the integrity of the workers at Hacienda Brasil Verde was at risk; ii) the consequent urgency derived from the situation of work conditions analogous to slavery, and iii) the importance in the resolution of the proceedings of reparations for the workers as well as terminating the situation of slavery that existed on the farms, the Court observes that here there was a special obligation to act with due diligence, and that this obligation was not met by the State. Therefore, the Court concludes that the State violated the judicial guarantee to due diligence, as set forth in Article 8(1) of the American Convention on Human Rights, in relation to Article 1(1) of the same instrument, to the detriment of the 43 workers found to be at Hacienda Brasil Verde during the inspection on April 23, 1997, and who were identified by the Court in this litigation (*supra* para. 199).

B.2. Reasonable Time Frame

369. Regarding procedural speed, this Tribunal has noted that the "reasonable time" frame referred to in Article 8(1) of the Convention must be appreciated in relation to the total duration of the proceedings from their initiation until a definitive verdict is reached.[483] The right of access to justice implies that a solution to the controversy be reached in a reasonable amount of time,[484] since a prolonged delay can end up being its own violation of judicial guarantees.[485]

370. Concerning the alleged breach of judicial guarantee of a reasonable time frame in the criminal proceedings, the Court will examine four criteria established in its case law on the subject: i) complexity of the matter; ii) interested party's procedural participation; iii) conduct of the legal authorities, and iv) effect the judicial situation has on the person involved in the process.[486] The Court reiterates that it is up to the State to justify, based on aforementioned criteria, the reason for so much time to have passed during

[483] *Cf. Suárez Rosero v. Ecuador*. Background, November 12, 1997, C35, para. 71, and *Quispialaya Vilcapoma*, para. 176.
[484] *Cf. Suárez Rosero v. Ecuador*. Background, November 12, 1997, C35, para. 71, and *Quispialaya Vilcapoma*, para. 176.
[485] *Cf.* Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago. Background, Reparations and Costs, June 21, 2002, C94, para. 145, and *Tenorio Roca*, para. 237.
[486] *Valle Jaramillo et al. v. Colombia*. Background, Reparations and Costs, November 27, 2008, C192, para. 155, and *Tenorio Roca*, para. 238.

the course of the case and, not having done so, the Court has broad powers to make its own assessment of the situation.[487]

371. In the present case, the criminal proceedings regarding the audit inspection made in April of 1997 began with the formal complaint filed by the Federal Public Prosecutor in June of the same year and concluded with the statute of limitation declaration in 2008 (*supra* para. 161), which means that the process went on for approximately 11 years. The Court will now endeavor to determine if that time frame is reasonable according to the criteria established in its jurisprudence.

i) Complexity of the Matter

372. This Tribunal has taken into account diverse criteria in order to determine the complexity of a proceeding. Among them, the complexity of the evidence, the multiplicity of procedural subjects or the number of victims, time that has passed since the violation, characteristics of the appeal enshrined in domestic legislation and the context in which the violation occurred.[488]

373. The Court observes that in the present case the characteristics of the proceedings were not especially complex. The charges against Raimundo Alves de Rocha, Antônio Alves Vieira and João Luiz Quagliato Neto were based on the audit inspection from April 1997 at Hacienda Brasil Verde, and the Federal Public Prosecutor had enough information to make the indictments. The multiplicity of the procedural subjects was also not a hindrance, because they belonged to a specific and delineated group. The Court does not discern any particular reason that could justify categorizing this case as one of special complexity or why it should have taken more than 10 years to prosecute.

ii) Interested Party's Procedural Participation

374. In the present case, the Court did not find evidence that would lead it to infer that there was any kind of conduct or activity on the part of the interested parties that obstructed the proceedings. On the contrary, the Court notes that the workers found in the 1997 report, which led to the June 1997 criminal indictment, were unable to participate in the proceedings undertaken as a result of facts found at Hacienda Brasil Verde.

375. The Court reiterates that in reference to the exercise of the right to judicial guarantees established in Article 8 of the American Convention, the Court has established, *inter alia*, that "it is necessary to follow all the requirements whose purpose is to protect, ensure or give value to the entitlement to or exercise of a

[487] *Cf. Anzualdo Castro v. Peru*. Preliminary Objection, Background, Reparations and Costs, September 22, 2009, C202, para. 156, and *Quispialaya Vilcapoma*, para. 178.
[488] *Cf.* Inter alia, *Genie Lacayo v. Nicaragua*. Preliminary Objections, January 27, 1995, C21, para. 78, and *Quispialaya Vilcapoma*, para. 179.

right, which is to say, conditions must be met to ensure adequate representation or management of the interests or claims of those whose rights or obligations are under judicial consideration".[489]

376. The Tribunal also reiterates that, in accordance with the rights recognized in Article 8(1) of the American Convention, in relation to Article 1(1) thereof, the States have the obligation to guarantee the right of the victims or their families to participate in all steps of the respective processes, in such a way that they can make proposals, receive information, offer evidence, formulate pleas, and, in general, assert their rights.[490] Said participation must have as its goal access to justice, knowledge of the truth of what occurred and the granting of a just reparation.[491] However, an effective search for the truth is the State's responsibility, and does not depend on the procedural initiative of the victim or the victim's family or their personal contribution of evidence.[492] In the present case, the penal action was the responsibility of the Federal Public Prosecutor because it involved a crime of "unconditional public criminal action."

iii) Conduct of the Legal Authorities

377. The Court repeats that in the present case the criminal indictment was filed on June 30, 1997, and it was not until September13, 1999, that a preliminary public hearing was held concerning the accused Quagliato Neto (*supra* para. 153). Subsequently, on March 16, 2001, the federal judge declared a lack of jurisdiction to hear the case and sent the case file to the state court of Pará. On May 28, 2002, the criminal action against João Luiz Quagliato Neto was declared closed, and on November 8, 2004, the state judge declared a lack of jurisdiction to try the case and returned the case file to the federal level. In the long lapses of time between the actions mentioned above, no relevant procedural steps were pursued. On September 26, 2007, the Superior Court of Justice determined the competent jurisdiction to be the federal one, and it remitted the case file to the Federal Court of first instance of Marabá. Finally, on July 10, 2008, the Federal Public Prosecutor presented his final arguments, in which he requested the criminal case against Raimundo Alves da Rocha and Antônio Alves Vieira be closed. That same day the Federal Judge of Pará declared the criminal case against them to be closed, citing a particular interpretation of the statute of limitations (*supra* paras. 160 and 161).

378. Based on the above, this Court finds that there were delays in the criminal proceedings due to the jurisdictional conflicts and the lack of diligent action by judicial authorities. The Court considers there to have been no reasons presented to explain the legal authorities' inaction or delays due to jurisdictional conflicts. Therefore, the Court finds that the legal authorities did not endeavor in a diligent way to respect reasonable time frames in these criminal proceedings.

489 *Cf.* Judicial Guarantees in States of Emergency (Arts. 27(2), 25 and 8 of the American Convention on Human Rights). Advisory Opinion 9/87, October 6, 1987, A9, para. 28, and the J Case, para. 258.
490 *Cf. "Niños de la Calle" (Villagrán Morales et al.) v. Guatemala*. Background, para. 246, and *Massacres at Río Negro*, para. 193.
491 *Cf. Valle Jaramillo et al*, para. 233, and *Massacres at Río Negro*, para. 193.
492 *Cf. Velásquez Rodríguez v. Honduras*. Background, para. 177, and *Massacres at Río Negro*, para. 193.

379. Regarding invoking the statute of limitations in these criminal proceedings, the Court observes that the statute was applied in accordance with the interpretation of Brazilian legislation current at the time of the facts. Even so, the Court notes that the statute followed the interpretation that "more than 10 years had passed since the first complaint against them was made, the maximum applicable penalty was eight years and the statute of limitation was 12 years, therefore only in the case of being sentenced to the maximum time would the statute of limitations not have expired".. The passage of time, which eventually invoked the statute of limitations, is a result of the lack of diligence on the part of the Brazilian legal authorities, on whom responsibility fell to take all necessary measures to investigate, judge and, in this case, sanction the responsible parties,[493] and, as such, it is a question attributable to the State. Based on the above, the Court considers that the authorities did not endeavor in a diligent way to advance the prosecution, which culminated in the application of the statute of limitations to the criminal proceedings.

iv) Effect the Legal Situation has on the Person Involved in the Proceedings and Impacts on that Person's Rights

380. The Court observes that, in order to determine a reasonable time frame one must take into account the effects created by the duration of the legal proceedings on the life of the person involved in them, considering, among other things, the subject matter of the controversy. This Tribunal has established that if the passage of time has an impact in a way relevant to the legal situation of the individual, it will be necessary for the proceedings to move forward with utmost diligence so that the case may be resolved in the shortest amount of time.[494]

381. In this case the Court confirms that the resolution of the criminal proceedings against Raimundo Alves de Rocha, Antônio Alves Vieira and João Luiz Quagliato Neto, had an impact on the granting of reparations to the workers subjugated to slavery at Hacienda Brasil Verde. As a consequence of the lack of resolution in said process, the granting of reparations did not occur, which affected the aforementioned workers who did not receive any sort of compensation for the conditions they were subjected to at Hacienda Brasil Verde.

382. Now that these four criteria have been analyzed in an effort to determine a reasonable time frame for the criminal proceedings, and keeping in mind that there was a duty to act with particular due diligence considering the situation of the workers at Hacienda Brasil Verde and the extreme seriousness of the facts of the indictments, the Court concludes that the State violated the judicial guarantee to a reasonable time frame as set forth in Article 8(1) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of the 43 workers at Hacienda Brasil Verde who were found there during the reporting audit of April 23, 1997, and who were identified by the Court in this case (*supra* para. 199).

B.3. Absence of Effective Legal Protection

493 *Cf. Ximenes Lópes*, para. 199, and *Gonzales Lluy et al.*, para. 306.
494 *Cf. Valle Jaramillo et al.*, para. 155, and *Gonzales Lluy et al*., para. 309.

383. Now, the Court will make an analysis of the alleged violation of the right to judicial protection. In doing so, the Court will evaluate: i) if the proceedings initiated in 1997, 2000 and 2001 were effective recourses for investigating and sanctioning the people responsible for the facts verified at Hacienda Brasil Verde, and if there was an effective effort made toward reparations for the alleged victims; ii) the statutes of limitations brought to bear upon the proceedings and their compatibility with the obligations derived from international law, and iii) alleged discrimination in the access to judicial protection of the alleged victims.

384. In this case, the Court observes that in 1997, 2000 and 2001, two criminal proceedings were initiated, a civil proceeding and a labor proceeding in relation to the situation of the workers at Hacienda Brasil Verde. In this section, the Tribunal will examine both proceedings in order to determine if the State guaranteed the victims their judicial protection as established in Article 25(1) of the Convention. In doing so, brief mention will be made of actions taken in each proceeding.

385. The Court restates that as a consequence of the Ministry of Labor's report on June 30, 1997, the Federal Public Prosecutor filed criminal charges against: Raimundo Alves de Rocha, Antônio Alves Vieira, and João Luiz Quagliato Neto. On July10, 2008, the Federal Judge in Pará declared that only in the case of receiving the maximum sentence would they not fall under the statute of limitations, and then affirmed that the application of the statute of limitations would be inevitable. Based on the above, and also on the lack of action on the State's part, the judge ruled to close the criminal proceedings (*supra* para. 161).

386. Regarding the labor proceedings, the Court reiterates that on August 12, 1997, an administrative proceeding was opened by the 8th Regional Labor Legal Affairs Office. On November 14, 1997, the Regional Labor Delegation of Pará issued a report in relation to Hacienda Brasil Verde, which it stated that even where failures existed, the RLD "[preferred] to do nothing, and work on the assumption [...]" (*supra* para. 150). On October 13, 1998, the Public Ministry of Labor asked the Regional Labor Delegation of Pará to conduct a new audit inspection of the farm, given how much time had passed since the last one (*supra* para. 162). On February 8, 1999, the RLD of Pará reported that no new audit had been made due to a lack of funds. On June15, 1999, the Public Ministry of Labor reiterated its request.

387. Regarding the public civil action presented in 2000, the Court notes that in March of 2000, Antônio Francisco da Silva and Gonçalo Luiz Furtado escaped from Hacienda Brasil Verde and made their way to the Federal Police in Marabá (*supra* paras. 174 and 175). On March 15, 2000, the Regional Labor Delegation of Pará carried out a new audit inspection at Hacienda Brasil Verde in the presence of Federal Police (*supra* para. 177). On May 30, 2000, based on the report from the March 15,2000 audit, the Public Ministry of Labor filed a public civil suit with the Labor Rights Court of Araguaia against João Luiz Quagliato (*supra* para. 179).

388. On July 20, 2000, a public hearing was held before the Board of Reconciliation and Assessment of Araguaia regarding the accusation made by the Public Prosecutor. In May of 2002, the Ministry of Labor

carried out a new audit with the purpose of verifying compliance with the agreements entered into between the Public Ministry of Labor and various rural employers, and, as part of that series of audits they made a site-visit to Hacienda Brasil Verde. After the audit, the Public Ministry of Labor concluded that the employers were complying with their commitments, and as a result of said commitments, the farm managers at the behest of their employer had eliminated the physical and economic dependence of the workers on the *gatos*, which was the cause of the exploitation of forced manual labor and labor analogous to slavery (*supra* paras. 181 and 184).

389. Lastly, in relation to the criminal proceeding resulting from the March 2000 audit, the Court notes that, during the public hearing, an expert witness and the representatives made reference to a criminal proceeding initiated concerning the facts documented on March 15, 2000 at Hacienda Brasil Verde. However, the State did not present information about said proceeding, nor has there been any evidence of its occurrence until now. The Court asked the State to present a full documentation of the referenced proceeding in order for the Court to have all available information for the issuance of its Ruling. The State informed the Court that, in spite of searching for it diligently, it had not succeeded in obtaining a copy of Proceeding No. 2001.39.01.000270-0, brought in 2001, before the Second District of the Federal Court of Marabá, in the State of Pará.

390. According to information available to the public on the official website of the Federal Judiciary of the State Pará, there is evidence that this criminal proceeding was heard before the Federal Court of Marabá on February 28, 2001, and subsequently was transferred to the State Court of Xinguara, in the state of Pará, on August 3, 2001. For 10 years, until June 2, 2011, there was no movement in said proceedings and there was no other information about it.[495]

i) Efficacy of the Proceedings and the Existence of an Effective Recourse

391. The Court has indicated that Article 25(1) of the Convention establishes, in broad terms, the obligation of the States to offer all people under their jurisdiction effective legal recourse against acts that violate fundamental rights.[496]

392. The Court has also established that in order for the State to meet the requirements of Article 25 of the Convention, it is not enough for the recourses to formally exist, but rather it is necessary that they be effective on their own terms, that they give outcomes or responses to violations of rights recognized, whether they be in the Convention, in the Constitution or in common law. This implies that the recourse must be suitable for combatting the violation and that its application by competent authorities be effective. Additionally, an effective recourse implies that the examination of a legal recourse by a competent authority cannot be reduced to mere formality, but rather the reasons invoked by the claimant

[495] Website of the Federal Judiciary of Pará: https://processual.trf1.jus.br/consultaProcessual/processo.php?proc=200139010002700&secao=MBA&pg=1&trf1_captcha_id=2dc48777b78e795a538b3aa440996f7b&trf1_captcha=f4gj&enviar=Pesquisar (last visited October 10, 2016.)
[496] *Cf. Velásquez Rodríguez v. Honduras*. Preliminary Objections, para. 91, and *Maldonado Ordoñez*, para. 108.

must be examined and decided upon.[497] Recourses which because of the general conditions of the country or even because of the particular circumstances of a given case turn out to be illusory, cannot be considered effective.[498] Such can occur, for example, when their uselessness has been shown through practice, because they lack the methods by which decisions can be executed, or for whatever other situation that characterizes a denial of justice.[499] Therefore, the process must include demonstrable protection of the right recognized in the legal pronouncement through a suitable application of said pronouncement.[500]

393. The Court has noted, in terms of Article 25 of the Convention, that it is possible to identify two specific State obligations. The first is to enshrine in law and ensure the due application of effective recourse before competent authorities, in such a way as to protect everyone within its jurisdiction against acts that violate their basic rights. The second is to guarantee that methods are in place for executing decisions and rulings laid down by said competent authorities, in such a way as to effectively protect declared and recognized rights.[501] The right established in Article 25 is intimately bound with the general obligation in Article 1(1) of the Convention, attributing protective functions of domestic law to the States Parties.[502] Based on the above, the State bears the responsibility of not only legally designing and enshrining effective recourse, but also of ensuring its due application by judicial authorities.[503]

394. In the present case, the Court observes that the Brazilian State has a regulatory framework which, in principle, allows for the guarantee of judicial protection of people, sanctioning the commission of illicit behavior and of providing for the reparation of harms done to victims in cases of violation of Article 149 of the Brazilian Penal Code, which characterizes the reduction to a condition analogous to slavery as a crime.

395. Nevertheless, the Court recapitulates its jurisprudence which holds that the existence of judicial remedies alone do not meet the conventional obligation of the State; the recourse must include suitable and effective instruments and it must offer a thorough and timely response according to its purpose, that is, to establish responsibility for violations and remedy for victims. The Court will now examine whether the proceedings carried out in the present case were in fact suitable and effective instruments.

396. As relates to the criminal proceeding in 1997, the Court points out that criminal charges were brought against the *gato* Raimundo Alves da Rocha; Antônio Alves Vieira, manager of Hacienda Brasil Verde and João Luiz Quagliato Neto, the farm's owner. However, only Raimundo Alves and Antônio

497 *Cf. López Álvarez v. Honduras*. Background, Reparations and Costs, February 1, 2006, C141, para. 96, and *Maldonado Ordoñez*, para. 109.
498 *Cf. Ivcher Bronstein v. Peru*. Background, Reparations and Costs, February 6, 2001, C7, para. 137, and *Maldonado Ordoñez*, para. 109.
499 *Cf. Las Palmeras v. Colombia*. Reparations and Costs, November 26, 2002, C96, para. 58, and *Maldonado Ordoñez*, para. 109.
500 *Cf. Baena Ricardo et al. v. Panama*. Jurisdiction, November 28,2003, C104, para. 73, and *Maldonado Ordoñez*, para. 109.
501 *Cf. "Niños de la Calle" (Villagrán Morales et al.) v. Guatemala*. Background, para. 237, and *Maldonado Ordoñez*, para. 110.
502 *Cf.* Castillo Páez v. Peru. Background, November 3,1997, C34, para. 83, and *Maldonado Ordoñez*, para. 110.
503 *Cf."Niños de la Calle" (Villagrán Morales et al.) v. Guatemala*. Background, para. 237, and *Maldonado Ordoñez*, para. 110.

Alves were accused of committing the crime of reducing the workers to a condition analogous to slavery, whereas João Luiz Quagliato Neto was accused of committing a less serious crime.

397. In addition to the delay caused by the lack of procedural action, there was also a delay caused by jurisdictional conflict which also affected due diligence in the criminal proceedings (*supra* para. 367), and the Court notes that after several actions which were not procedurally relevant, on May 28, 2002, the criminal case against João Luiz Quagliato Neto was declared closed, and on July 10, 2008, the statute of limitations was invoked for the wrongdoings attributed to Raimundo Alves de Rocha and Antônio Alves Vieira, after a procedural delay of 10 years.

398. The Court observes that the criminal proceedings in 1997 should have been carried out with particular diligence because of the nature of the charges. To the contrary, prolonged delays for reasons attributable to legal authorities made it impossible to analyze the case. The Court highlights that the Public Prosecutor, in his request to invoke the statute of limitations, stated that "there is sufficient evidence of the perpetration of the practice of the crimes of reduction to conditions analogous to slavery [...], offense against the freedom to work [...] and illegal recruitment of workers from one region to another within national borders [...], through debt bondage." However, in spite of being aware of said conditions, no necessary procedural movement was made in order that the judicial authorities could establish in a prompt and expeditious way who to hold responsible in this case and what measures could be taken to protect and compensate the victims.

399. The judicial authority considered the proceedings were "doomed to failure," indicating that with the evidentiary elements they had to rely on in the criminal prosecution it was useless to continue the proceedings, also taking into account "the lack of action on the part of State, criminal policy and procedural economy."[504]

400. The criminal proceedings in 1997 began and ended without any real analysis of the background of the matter, despite the extreme seriousness of the charges brought against the accused. In addition to the jurisdictional conflicts and other failures of due diligence, the proceedings did not examine the facts of the case, nor did they represent an effective mechanism for examining the commission of the crime of reduction to a condition analogous to slavery as spelled out in Article 149 of the Brazilian Penal Code, the responsibilities of the accused or reparations for the victims. The only measure taken that could be considered reparation was the agreement reached with Quagliato Neto which consisted of his delivering six food baskets to a charity organization in São Paulo, in exchange for suspending the proceedings against him.

401. Regarding the proceedings initiated before the Labor Court, this Court notes that on January 15, 1999, João Luiz Quagliato Neto, owner of Hacienda Brasil Verde, was advised to abstain from the practice of charging workers for their footwear, and was warned that if he did not do so then legal actions would be taken against him, an order which was recorded in the evidence file. Despite the seriousness of

[504] Ruling on July 10, 2008 (evidence file, page 5622).

the situations referred to in the audit inspection report from 1997, the Regional Labor Delegation of Pará preferred "not to act, but instead to work on the assumption that the errors were being corrected."

402. Concerning the public civil action filed in 2000 against João Luiz Quagliato Neto, the Court points out that that proceeding concluded with a settlement, in which Quagliato Neto promised not to allow work within a "system of slavery" and to provide decent working conditions, with the warning that a failure to do so would be met with fines. In spite of the serious nature of the facts confirmed at the farm, an agreement was reached without giving a detailed consideration of the seriousness of the facts or of the need for reparations to the farm workers.

403. Lastly, in relation to the criminal proceedings initiated in 2001 before the 2nd District of the Federal Court of Marabá, in the state of Pará, the Court points out that the State did not provide copies of the case file, therefore there is no way to determine if said criminal proceedings constituted an effective recourse for analyzing responsibility, or for determining sanctions or reparations according to the facts of the case.

404. Because of all of the above, the Court advises that none of the proceedings for which it has received information determined any type of responsibility for the accused conduct, nor did they lead to the granting of reparations for harm done to the victims, due to the fact that none of the proceedings included a background study of each issue raised.

405. This situation resulted in a denial of justice to the detriment of the victims, because it was not possible to guarantee them, materially or legally, judicial protection in this case. The State did not provide the victims with effective recourse by way of competent authorities who would have protected their human rights against acts that violated them.

406. In conclusion, in spite of the extreme gravity of the charges filed, the proceedings they led to i) did not enter into an analysis of the background of the issues raised; ii) did not determine responsibility nor did they adequately sanction the parties responsible for the facts; iii) did not offer a mechanism of reparation for the victims, and iv) did not have an impact on preventing a continuation of the violation of the victims' human rights.

407. The Court points out that, given the presence of victims who were minors and the State's knowledge of this fact, the responsibility to provide a simple and effective recourse for the protection of their rights was even greater. The Court has already observed that it views with special seriousness cases where the victims of human rights violations are children, who are entitled to the rights established in the American Convention, in addition to counting on measures of special protection set forth in its Article 19, which must be defined according to the particular circumstances of each concrete case.[505]

ii) Statute of Limitations Compatibility with Obligations Derived from International Law

[505] Cf. *Fornerón and Daughter v. Argentina.* Background, Reparations and Costs, April 27, 2012, C242, para. 44, and *Comunidad Campesina de Santa Bárbara,* para. 491.

408. The Court would first like to restate that it has determined that States have an obligation that binds all their powers and state bodies together, which are then obligated to exercise *ex oficio* control of conventionality between their internal regulations and the American Convention, within the framework of their respective jurisdictions and the corresponding procedural regulations.[506]

409. The Court has likewise determined that a State that has signed an international treaty must introduce in its domestic legislation the necessary modifications to ensure execution of the assumed obligations,[507] and that this principle recognized in Article 2 of the American Convention establishes the general obligation of States Parties to conform their domestic law to the dispositions of the same, in order to guarantee the rights contained therein,[508] which implies that domestic legal measures must be effective (*effet utile*).[509]

410. Accordingly, this Tribunal has understood such conformity to imply the adoption of measures in two respects: i) the suppression of regulations and practices of any kind which entail a violation to the guarantees set forth in the Convention or which ignore the rights recognized therein or which obstruct the exercise of those rights, which implies that the regulation or practice in violation of the Convention must be modified, repealed, annulled or reformulated, according to the circumstance,[510] and ii) the expedition of regulations and the development of practices conducive to the effective observance of said guarantees.[511]

411. In the present case the Court points out that the 1997 action regarding Raimundo Alves de Rocha and Antônio Alves Vieira ended with a statute of limitations declaration regarding any penalty for the alleged crimes: reduction to a condition analogous to that of a slave (Art. 149), infringement against the freedom to work (Art. 197(1)) and illegal recruitment of workers from one location to another within national borders (Art. 207).

412. The Court has already observed that invoking the statute of limitations in a criminal matter terminates punitive possibilities due to the passage of time and, generally, limits the punitive power of the State to pursue illicit behavior and sanction whoever is responsible for it. This is a guarantee that must be duly observed by the court for anyone accused of a crime. Without prejudice to the above, the statute of limitations for a criminal action is inadmissible when there are provisions for it in international law. In this case slavery is considered a crime under international law whose prohibition has *jus cogens* status (*supra* para. 249). Likewise, the Court has indicated that invoking procedural standards, such as statutes of limitations, in order to avoid the obligation to investigate and sanction those crimes, is not

506 *Cf. Almonacid Arellano et al. v. Chile*. Preliminary Objections, Background, Reparations and Costs, September 26, 2006, C154, para. 124, and *Garífuna Community of Punta Piedra and its Members v. Honduras.* Preliminary Objections, Background, Reparations and Costs, October 8, 2015, C304, para. 346.
507 *Cf. Garrido and Baigorria*. Reparations and Costs, August 27, 1998, C39, para. 68, and *Maldonado Ordoñez*, para. 111.
508 *Cf. Garrido and Baigorria*. Reparations and Costs, para. 68 and *Maldonado Ordoñez*, para. 111.
509 *Cf. Ivcher Bronstein.* Jurisdiction, September 24, 1999, C54, para. 37, and *Maldonado Ordoñez*, para. 111.
510 *Zambrano Vélez et al. v. Ecuador*. Background, Reparations and Costs, July 4, 2007, C166, para. 56, and *Maldonado Ordoñez*, para. 111.
511 *Cf. Zambrano Vélez et al*, para. 56, and *Maldonado Ordoñez*, para. 111.

admissible.[512] In order for the State to satisfy the duty to an adequate guarantee of various rights protected in the Convention, among them the right of access to justice, it is necessary for it to comply with its duty to investigate, judge and, according to the facts of the case, sanction and provide reparations. In order to meet this goal, the State must observe due process and guarantee, among other things, the principle of a reasonable time frame, effective recourse and compliance with the sentence.[513]

413. The Court has already established that: i) slavery and its analogous forms constitute a crime in international law, ii) whose prohibition in international law is a *jus cogens* rule (*supra* para. 249). Therefore, the Court considers the statute of limitations for crimes of subjugation to the condition of slavery and its analogous forms to be incompatible with the Brazilian State's obligation to adapt its internal regulations in accordance with international standards. In the present case, the application of the statute of limitations constituted an obstruction of the investigation into the facts, of the determination and sanction of responsible parties, and reparation for the victims, despite the international nature of the crime the charges represented.

iii) Alleged Discrimination in the Access to Justice

414. The Court restates that the Commission noted that in this case there were examples of concrete actions in the access to justice which occurred within a framework of structural discrimination, given that not only were no criminal procedures initiated when the audit inspections found labor irregularities at Hacienda Brasil Verde, but also once labor law proceedings were initiated a conciliatory agreement was reached with the farm owner, without any consideration given to the victims. Additionally, the representatives indicated that the lack of effective action on the part of the authorities in the face of complaints and the recurrence of reported facts showing evidence of a situation of structural discrimination on the State's part, which permitted the perpetuation of a situation of exploitation of a specific group of people.

415. In that regard, the Court has established in its jurisprudence that Article 1(1) of the Convention is a general purpose rule whose content extends to all provisions of the treaty, inasmuch as it stipulates the obligations of States Parties to respect and guarantee the full and free exercise of the rights and liberties recognized therein "without any discrimination." That is to say, whatever origin or form it may assume, any treatment which could be considered discriminatory with respect to the exercise of any of the rights guaranteed in the Convention is per se incompatible with the treaty. A State's failure to comply, through any sort of discriminatory treatment, with the general obligation to respect and guarantee human rights, carries with it international responsibility. That is why there is an indissoluble bond between the obligation to respect and guarantee human rights and the principle of equality and non-discrimination.[514]

512 *Cf. Barrios Altos v. Peru*. Background, March 14, 2001, C75, para. 41; *Almonacid Arellano*, para. 110.
513 *Massacre at La Rochela v. Colombia*. Background, Reparations and Costs, May 11, 2007, C163, para. 193.
514 Legal status and rights of undocumented migrants, para. 85; and *Duque*, para. 93.

416. Furthermore, the Court has indicated that the principles of equal and effective protection of the law and that of non-discrimination constitute an outstanding element of the tutelary system of human rights enshrined in numerous international instruments and developed through doctrine and jurisprudence. In the current stage of the evolution of international law, the fundamental principle of equality and non-discrimination has entered into the domain of *jus cogens*. The legal framework of national and international public order is built on that principle, which permeates the entire legal system.[515]

417. In the present case the Court notes that there was a disproportional bias against one part of the population which shared characteristics in common relative to their conditions of exclusion, poverty and lack of formal education. It was confirmed that the victims identified in the 2000 audit inspection shared these characteristics, which placed them in a particular situation of vulnerability (*supra* para. 41).

418. The Court notes that from an examination of the proceedings that were carried out regarding the facts that occurred at Hacienda Brasil Verde, it can be observed that the authorities did not treat the alleged facts of the case with the extreme seriousness they merited, and, as a consequence, they did not act with the due diligence necessary to guarantee the victims' rights. Their failure to take action, together with the lack of severity of the agreements reached and the recommendations issued, reflected a lack of condemnation of the facts that occurred at Hacienda Brasil Verde. The Court considers that this lack of action and sanction of the facts can be explained because of a normalization of the conditions to which people with certain characteristics and from the poorest states in Brazil were continuously subjugated.

419. Therefore it is reasonable to conclude that the lack of due diligence and sanction for the fact that people were subjugated to a condition analogous to slavery was related to a preconception that the conditions to which the workers from the north and northeast of Brazil were subjugated could be considered normal. This preconception was discriminatory in relation to the victims of the case, and it had an impact on the authorities taking action to obstruct the possibility of conducting proceedings that would sanction responsible parties.

iv) Conclusion

420. Based on the above, the Court concludes that the State violated the right to judicial protection, as provided for in Article 25 of the American Convention on Human Rights, in relation to Articles 1(1) and 2 of the same instrument, to the detriment of: a) the 43 workers rescued from Hacienda Brasil Verde during the reporting audit on April 23, 1997, and who were identified by the Court in the present dispute (*supra* para. 199), and b) the 85 workers rescued from Hacienda Brasil Verde during the reporting audit on March 15, 2000, and who were identified by the Court in the present dispute (*supra* para. 206). Furthermore, the Court concludes that, regarding Antônio Francisco da Silva, who was a child during part of the facts of this case, the violation of Article 25 of the American Convention previously declared is also related to Article 19 of the same instrument.

[515] Legal status and rights of undocumented migrants, para. 101; and *Duque*, para. 91.

B.4. Investigations Carried out in Relation to the Alleged Forced Disappearances of Iron Canuto da Silva and Luis Ferreira da Cruz

421. The Court confirms that in the present case there has been no allegation of a violation of the State's duty to respect the rights of personal liberty, personal integrity, life, recognition of legal personality and rights of the child in the cases of Iron Canuto da Silva and Luis Ferreira da Cruz. The controversy has only been raised regarding the alleged breach of the State's obligation to guarantee said rights by way of an investigation, and so the Court will examine the effectiveness of said investigations below.

B.4.1 Arguments from the Parties and the Commission

422. The **Commission** argued that when they received the complaints in 1988 about the disappearance of the adolescents named Iron Canuto da Silva, aged 17, and Luis Ferreira da Cruz, aged 16, state authorities waited more than two months before they made a visit to Hacienda Brasil Verde, at which point they received information that the adolescents had fled to a nearby farm. The authorities did not make any effort whatsoever to confirm this situation nor did they open an investigation about it. The Commission observed that the disappearance of the adolescents and the situation of vulnerability in which they found themselves resulted in their exclusion from the legal and institutional system of the State, preventing them from taking any legal action with respect to the exercise of their rights, and it has kept them outside the real and legal world. Likewise, the Commission indicated that the disappearance of Iron Canuto da Silva and Luis Ferreira da Cruz is a patent example of structural discrimination given that, despite the passage of time since their disappearance, the State has not undertaken any serious measures to investigate the facts and find the boys. Because of the foregoing, the Commission concluded that Iron Canuto da Silva and Luis Ferreira da Cruz were victims of the violation of Articles 7, 5, 4, 3 and 19 of the American Convention, in accordance with Articles 8, 25 and 1(1) of the same instrument.

423. The **representatives** argued that because of the complaint filed by the family members of Luis Ferreira da Cruz and Iron Canuto da Silva, the State had direct and timely knowledge of their disappearance. However, ignoring the special measures of protection that should be observed regarding minors, state authorities did not take immediate action, but rather let two months go by after the complaint was made before the Federal Police showed up at the location of the facts and proceeded to interview a few people regarding the case, who claimed that Luis Ferreira da Cruz and Iron Canuto da Silva had fled to another farm. The Federal Police did not confirm this piece of information nor did they proceed to open any investigation whatsoever. Furthermore, the representatives specified that while the State obtained information concerning the whereabouts and death of Iron Canuto da Silva in 2007, such was not the case for Luis Ferreira da Cruz, who remains missing today. Therefore, the representatives concluded that 28 years after a complaint was filed regarding the disappearance of the adolescent named Luis Ferreira da Cruz, the State is internationally responsible for violating its right of guarantee with respect to his rights to legal personality, life, personal integrity and personal liberty, because of its failure to investigate the facts of his disappearance. The representatives also argued that the state's failure to carry out a serious and diligent search for Luis Ferreira da Cruz, the re-victimization on the State's part in

the proceedings before the Inter-American Commission, the suffering and anguish caused because of the knowledge of the circumstances of his disappearance, as well as the fact that he was subject to contemporary forms of slavery, also result in the violation of his kin's family right to personal integrity.

424. The **State** argued that Luis Ferreira da Cruz and Iron Canuto da Silva were not victims of forced disappearance or any other violation of human rights at the moment of their escape from Hacienda Brasil Verde. In that regard, the State offered as evidence the death certificate of Iron Canuto da Silva, which shows he died on July 22, 2007. Likewise, the State claimed that on August 4, 2015, Maria do Socorro Canuto and María Gorete, Luis Ferreira da Cruz's foster mother and sister, respectively, told the Federal Police on the phone that Luis Ferreira da Cruz had died in a confrontation with the Military Police in the city of Xinguara approximately 10 years earlier.

425. The State also indicated that because no identification documents could be found at the time of his death, Luis Ferreira da Cruz was buried as an indigent and, therefore, his name does not appear in the data base of the city of Xinguara's civil registry. Therefore, the State argued that after his escape from Hacienda Brasil Verde, Luis Ferreira da Cruz went on with his life for more than 15 years, without there being any indication or evidence during this time that he was being subjected to a forced disappearance. Additionally, the State testified that the complaint concerning the alleged disappearance was filed four months after its supposed occurrence, which made it impossible for the State to prevent the alleged occurrence from happening. Consequently, the State concluded that it could not be found responsible for the alleged violation of human rights set forth in Articles 3, 4, 5, and 7 of the American Convention, to the detriment of Luis Ferreira da Cruz, nor for the alleged violation of Articles 8 and 25 of the same instrument to the detriment of his family.

B.4.2 The Court's Findings

426. The Court has established that as long as a forced disappearance persists, the States have the corresponding duty to investigate it and, eventually, sanction whoever is responsible for it, according to the obligations derived from the American Convention and, in particular, the Inter-American Convention on the Forced Disappearance of Persons.[516] In accordance with the parties' arguments, this would be the obligation that the State presumably did not meet in the present case.

427. Regarding the duty of due diligence in the face of formal complaints of disappearance, the Court has established that this serious obligation demands that an exhaustive search be undertaken. In particular, prompt action on the part of police, fiscal and legal authorities is essential, as is the ordering of appropriate and necessary measures toward determining the presumed victims' whereabouts. There must also be adequate procedures for filing complaints and they must have as a consequence the launch of an

[516] *Cf. Radilla Pacheco v. México*. Preliminary Objections, Background, Reparations and Costs, November 23, 2009, C209, para. 145, and Case of *Comunidad Campesina de Santa Bárbara*, para. 161.

effective investigation right away. The Tribunal has established that the authorities must presume that the disappeared person remains alive until there is no longer any uncertainty about the victim's fate.[517]

428. In the present case the Court confirmed as background that on December 21, 1988, the Pastoral Land Commission and the Diocese of Araguaia, together with José Teodoro da Silva, father of lron Canuto da Silva, 17, and Miguel Ferreira da Cruz, brother of Luis Ferreira da Cruz, 16, filed a complaint with the Federal Police concerning the practice of slave labor at Hacienda Brasil Verde, as well as for the disappearance of both boys. In that complaint they alleged that in August of 1988, Iron Canuto da Silva and Luis Ferreira da Cruz had been taken by Manoel Pinto Ferreira, a *gato* known as "Mano," to work for 60 days at Hacienda Brasil Verde. They also indicated that according to what the *gato* "Mano" had told them, at some point in September of the same year the boys had tried to escape from the farm but the *gato* had found them and forcibly returned them. The *gato* threatened to kill the boys and even fired his gun a few times. Lastly, the claimants indicated that they did not know where the boys were, and the situation had created a great deal of worry for the family (*supra* para. 130).

429. The Tribunal verified that on February 20, 1989, the Federal Police paid a visit to Hacienda Brasil Verde. In that visit, the workers who were there identified the *gato* known as "Mano" and told the Federal Police that Iron Canuto da Silva and Luis Ferreira da Cruz had escaped from Hacienda Brasil Verde, and had gone in the direction of Hacienda Belém (*supra* paras. 134 and 135). In the face of this confirmation the police did not continue with the investigation into the disappearance of Iron Canuto da Silva and Luis Ferreira da Cruz, because they did not consider the boys to be missing. With respect to the above, the Court does not have jurisdiction to declare a violation of the American Convention because the facts occurred before State recognition of its jurisdiction. Therefore, the eventual failures in that investigation cannot be subject to this Tribunal's determination.

430. Likewise, in 2007, during the proceedings of the case before the Inter-American Commission, the State reopened the investigation and found out that Iron Canuto da Silva was killed on July 22, 2007, by an unidentified person in circumstances unrelated to the facts of the present case. In that regard, Raimunda Márcia Azevedo da Silva made a statement at the police station in Floresta do Araguaia, Pará, declaring that she had lived maritally with Iron Canuto da Silva since 1994 and that they had four young children (*supra* para. 187). Also presented as evidence was the autopsy report, which indicated that Iron Canuto da Silva died due to gunshot wounds (*supra* para. 187). Therefore, the Court observes that the State reopened the investigation into the disappearance of Iron Canuto da Silva in 2007 and confirmed that he had not been a victim of forced disappearance.

431. On the other hand, as far as Luis Ferreira da Cruz is concerned, the Court notes that as a consequence of the reopening of the investigation in 2007, it was verified that on February 17, 2009, Maria do Socorro Canuto, foster mother of Luis Ferreira da Cruz, declared before the Secretary of Justice and Human Rights of the State of Pará that since his escape from Hacienda Brasil Verde no one knew his

[517] *Cf. González et al. ("Campo Algodonero") v. México*. Preliminary Objection, Background, Reparations and Costs, November 16, 2009, C205, para. 283, and *Velásquez Paiz et al*., para. 122.

whereabouts (*supra* para. 188). However, on August 4, 2015, Mrs. Canuto and Maria Gorete, Luis Ferreira da Cruz's foster sister, said during a phone call with the Federal Police that Luis Ferreira da Cruz had died approximately 10 years earlier in a confrontation with the Military Police in the city of Xinguara. Additionally, María Gorete declared that when they were informed of Luis Ferreira da Cruz's death, he had already been buried as an indigent because he was not carrying any identifying documents at the time of his death. The Federal Police asked Xinguara's Civil Registry for Luis Ferreira da Cruz's death certificate, but were told there was no record of his death, which was probably due to the fact that he had been buried as an indigent. Furthermore, in a declaration made to the Federal Police on January 26, 2016, Maria do Socorro Canuto testified that she learned about the death of Luis Ferreira da Cruz from her mother, who had gotten the news from a stranger.

432. The Court observes that, regarding the presumed death of Luis Ferreira da Cruz, the evidence put forward by the Commission and the parties is contradictory and inconclusive. In 2009, the version of Luis Ferreira da Cruz's foster family established that he had been missing since his escape from Hacienda Brasil Verde in 1988. However, in 2015, Maria do Socorro Canuto and Maria Gorete testified that Luis Ferreira da Cruz had died 10 years earlier, at some point in 2005. Furthermore, in a statement made in 2016, Maria do Socorro indicated that the person who relayed said information was someone they did not know. None of Maria do Socorro Canuto's statements indicate the approximate date she received news of Luis Ferreira da Cruz's death. Even if that information were true, and Luis Ferreira da Cruz is deceased, having died without identifying documents, it is probable that he was buried as a pauper, and it is an undisputed fact that his name does not appear in any death register.

433. Based on all of the above, in relation to the facts over which it has jurisdiction, the Court notes that the State reopened the investigation into the alleged disappearance of Luis Ferreira da Cruz in 2007, however it did not succeed in establishing his whereabouts. Subsequently, in 2015, the State confirmed through his kin's family statements that Luis Ferreira da Cruz would have died around 2005. Because of the foregoing, the evidence put forward by the Commission and by the parties, at the moment of the issuance of the present judgment, the Inter-American Court finds it impossible to conclude that Luis Ferreira da Cruz was a victim of forced disappearance, and consequently cannot attribute responsibility to the State for its failure to investigate and eventually sanction the alleged responsible parties.

434. Based on the above, the Court concludes that the State is not responsible for the alleged violations of the rights to legal personality, life, personal integrity and personal liberty, as set forth in Articles 3, 4, 5 and 7 of the American Convention on Human Rights, in relation to the rights of children as established in Article 19 of the same instrument, to the detriment of Iron Canuto da Silva and Luis Ferreira da Cruz, nor for the violation of Articles 8 and 25 of the same instrument with detriment to their families.

IX. REPARATIONS
(APPLICATION OF ARTICLE 63(1) OF THE AMERICAN CONVENTION)

435. On the basis of the provisions in Article 63(1) of the American Convention,[518] the Court has established that every violation of an international obligation resulting in harm entails the responsibility of adequate reparation,[519] and that this provision is a customary rule which constitutes one of the fundamental principles of modern international law concerning State responsibility.[520]

436. Reparation for harm caused by the infringement of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists of the re-establishment of the prior situation. When that is not possible, as occurs in the majority of human rights violations, the Tribunal will determine methods for guaranteeing the violated rights and will repair the consequences those infractions produced.[521]

437. This Tribunal has established that reparations must have a causal link to the facts of the case, the declared violations, the proven damages, as well as to the measures required to repair the respective harms. Therefore, the Court must examine those concurrences in order to rule properly and in accordance with the law.[522]

438. Regarding the declared violations in the previous section, the Tribunal will proceed to examine the claims presented by the victims' representatives, as well as the State's arguments, in light of criteria established in the Court's jurisprudence in relation to the nature and scope of the obligation to make reparations,[523] in order to provide measures aimed at repairing the harm caused to the victims.

A. Injured Parties

439. This Tribunal reiterates that it considers the injured parties to be, in terms of Article 63(1) of the Convention, those individuals who have been declared victims of a violation of a right recognized therein.[524] Therefore, this Court considers the following individuals to be "injured parties":: 1. Alcione Freitas Sousa; 2. Alfredo Rodrigues; 3. Antônio Almir Lima da Silva; 4. Antônio Aroldo Rodrigues Santos; 5. Antônio Bento da Silva; 6. Antônio da Silva Martins; 7. Antônio Damas Filho; 8. Antônio de Paula Rodrigues de Sousa; 9. Antônio Edvaldo da Silva; 10. Antônio Fernandes Costa; 11. Antônio Francisco da Silva; 12. Antônio Francisco da Silva Fernandes; 13. Antônio Ivaldo Rodrigues da Silva; 14. Antônio Paulo da Silva; 15. Antônio Pereira da Silva; 16. Antônio Pereira dos Santos; 17. Carlito Bastos Gonçalves; 18. Carlos Alberto Silva Alves; 19. Carlos André da Conceição Pereira; 20. Carlos Augusto Cunha; 21. Carlos Ferreira Lopes; 22. Edirceu Lima de Brito; 23. Erimar Lima da Silva; 24. Firmino da

518 Article 63(1) of the American Convention establishes that: "[i]f the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequence of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party".
519 *Cf. Velásquez Rodríguez v. Honduras*. Reparations and Costs, July 21, 1989, C7, para. 25, and *Herrera Espinoza et al*., para. 210.
520 *Cf. Velásquez Rodríguez v. Honduras*. Reparations and Costs, para. 25, and *Herrera Espinoza et al.*, para. 210.
521 *Cf. Velásquez Rodríguez v. Honduras*. Reparations and Costs, para. 26, and Herrera Espinoza et al., para. 210.
522 *Cf. Ticona Estrada et al*., para. 110, and *Herrera Espinoza et al*., para. 211.
523 *Cf. Velásquez Rodríguez v. Honduras*. Reparations and Costs, paras. 25 to 27, and *Flor Freire v. Ecuador*. Preliminary Objection, Background, Reparations and Costs, August 31, 2016, C 315, para. 215.
524 *Cf. Massacre at La Rochela*, para. 233, and *Herrera Espinoza et al*., para. 212.

Silva; 25. Francisco Antônio Oliveira Barbosa; 26. Francisco da Silva; 27. Francisco das Chagas Araujo Carvalho; 28. Francisco das Chagas Bastos Souza; 29. Francisco das Chagas Cardoso Carvalho; 30. Francisco das Chagas Costa Rabelo; 31. Francisco das Chagas da Silva Lira; 32. Francisco Mariano da Silva; 33. Francisco das Chagas Diogo; 34. Francisco das Chagas Moreira Alves; 35. Francisco das Chagas Rodrigues de Sousa; 36. Francisco das Chagas Sousa Cardoso; 37. Francisco de Assis Felix; 38. Francisco de Assis Pereira da Silva; 39. Francisco de Souza Brígido; 40. Francisco Ernesto de Melo; 41. Francisco Fabiano Leandro; 42. Francisco Ferreira da Silva; 43. Francisco Ferreira da Silva Filho; 44. Francisco José Furtado; 45. Francisco Junior da Silva; 46. Francisco Mirele Ribeiro da Silva; 47. Francisco Pereira da Silva; 48. Francisco Soares da Silva; 49. Francisco Teodoro Diogo; 50. Geraldo Ferreira da Silva; 51. Gonçalo Constâncio da Silva; 52. Gonçalo Firmino de Sousa; 53. Gonçalo José Gomes; 54. Gonçalo Luiz Furtado; 55. Jenival Lopes; 56. João Diogo Pereira Filho; 57. José Cordeiro Ramos; 58. José de Deus de Jesus Sousa; 59. José de Ribamar Souza; 60. José do Egito Santos; 61. José Gomes; 62. José Leandro da Silva; 63. José Renato do Nascimento Costa; 64. Juni Carlos da Silva; 65. Lourival da Silva Santos; 66. Luis Carlos da Silva Santos; 67. Luiz Gonzaga Silva Pires; 68. Luiz Sicinato de Menezes; 69. Manoel do Nascimento; 70. Manoel do Nascimento da Silva; 71. Manoel Pinheiro Brito; 72. Marcio França da Costa Silva; 73. Marcos Antônio Lima; 74. Paulo Pereira dos Santos; 75. Pedro Fernandes da Silva; 76. Raimundo Cardoso Macêdo; 77. Raimundo de Andrade; 78. Raimundo de Sousa Leandro; 79. Raimundo Nonato da Silva; 80. Roberto Alves Nascimento; 81. Rogerio Felix Silva; 82. Sebastião Pereira de Sousa Neto; 83. Silvestre Moreira de Castro Filho; 84. Valdir Gonçalves da Silva; 85. Vicentina Maria da Conceição; 86. Antônio Alves de Souza; 87. Antônio Bispo dos Santos; 88. Antônio da Silva Nascimento; 89. Antônio Pereira da Silva; 90. Antônio Renato Barros; 91. Benigno Rodrigues da Silva; 92. Carlos Alberto Albino da Conceição; 93. Cassimiro Neto Souza Maia; 94. Dijalma Santos Batista; 95. Edi Souza de Silva; 96. Edmilson Fernandes dos Santos; 97. Edson Pocidônio da Silva; 98. Irineu Inácio da Silva; 99. Geraldo Hilário de Almeida; 100. João de Deus dos Reis Salvino; 101. João Germano da Silva; 102. João Pereira Marinho; 103. Joaquim Francisco Xavier; 104. José Astrogildo Damascena; 105. José Carlos Alves dos Santos; 106. José Fernando da Silva Filho; 107. José Francisco de Lima; 108. José Pereira da Silva; 109. José Pereira Marinho; 110. José Raimundo dos Santos; 111. José Vital Nascimento; 112. Luiz Leal dos Santos; 113. Manoel Alves de Oliveira; 114. Manoel Fernandes dos Santos; 115. Marcionilo Pinto de Morais; 116. Pedro Pereira de Andrade; 117. Raimundo Costa Neves; 118. Raimundo Nonato Amaro Ferreira; 119. Raimundo Gonçalves Lima; 120. Raimundo Nonato da Silva; 121. Roberto Aires; 122. Ronaldo Alves Ribeiro; 123. Sebastião Carro Pereira dos Santos; 124. Sebastião Rodrigues da Silva; 125. Sinoca da Silva; 126. Valdemar de Souza; 127. Valdinar Veloso Silva, and 128. Zeno Gomes Feitosa, who as victims of the violations declared in section VIII of this ruling will be considered beneficiaries of the reparations ordered by the Court in the following paragraphs.

B. Investigative Measures

440. The **Commission** requested that an investigation be carried out into the facts related to the violations of human rights relative to slave labor and that those investigations be conducted impartially, effectively

and within a reasonable time frame, with the objective of clarifying the facts in a complete way, identifying responsible parties and imposing corresponding sanctions.

441. Additionally, the Commission required that the corresponding administrative, disciplinary and penal measures be made available with regard to the acts or omissions of state officials who contributed to the denial of justice and impunity to which the facts of the case attest. The Commission requested that special emphasis be placed on the following circumstances: i) that administrative but not criminal proceedings be opened for an investigation into those who are missing; ii) that administrative and labor law proceedings be opened for investigations into slave labor, and iii) that the only open penal investigation be related to the prescribed offense.

442. The **representatives** requested that the State investigate the facts through impartial, independent and competent institutions within a reasonable time frame. They alleged that the State is obligated to remove all obstacles that prevent an investigation into the facts and a ruling and eventual sentencing of those parties responsible for the serious violations of human rights in this case.

443. The **State** had no comment on this point.

444. The Court reiterates that in section VIII-2 it declared that the various investigations carried out by the State relative to the facts of this case were inadequate and violated the victims' rights to a fair trial and judicial protection.

445. Based on the above, the Court, as in other cases it has already heard,[525] and with attention to the nature of the crime of slavery in international law and the lack of a statute of limitations in cases of submitting a person to a condition analogous to slavery, stipulates that the State must restart, with due diligence, the investigations and/or criminal proceedings that correspond to the facts confirmed in March of 2000 in the present case in order to, within a reasonable time frame, identify, prosecute and, when applicable, sanction the responsible parties. In particular, the State must: a) ensure that victims and their families have full access and ability to act in every stage of the investigations, in accordance with domestic law and regulations of the American Convention; b) abstain from resorting to concepts such as amnesty or any other procedural obstacle which could serve as an excuse for not meeting its obligation, because slavery is a crime in international law and in consideration of the particularities and the context in which the facts occurred; c) guarantee that the investigations and proceedings based on the facts of the present case are maintained, at all times, at the behest of federal jurisdiction, and d) publicly divulge the results of the proceedings so that Brazilian society is aware of the judicial determination of the facts that are the subject of the present case.[526] In particular, the State must carry out an investigation and, if applicable, re-establish (or reconstruct) Penal Proceeding 2001.39.01.000270-0, initiated in 2001, before the Second District of the Federal Judiciary of Marabá, in the state of Pará.

525 Among others, *Quispialaya Vilcapoma*, para. 262, and *Tenorio Roca et al.*, para. 268.
526 *Cf. Caracazo v. Venezuela*. Reparations and Costs, August 29, 2002, C95, para. 118, and *Tenorio Roca et al.*, para. 269.

446. Additionally, as it has done on other occasions,[527] the Court stipulates that, in accordance with the pertinent disciplinary regulations, the State must examine any potential procedural and investigative irregularities related to the present case and, where applicable, sanction the conduct of the relevant public servants, without it being be necessary for the victims in the case to file complaints for such purposes.

C. Measures of Satisfaction and Guarantees of Non-Repetition

447. The Tribunal will now determine non-pecuniary methods that seek to repair immaterial harm, as well as measures with a broad scope or public repercussion.[528] International law, and in particular that of this Court, has established time and again that the sentence constitutes *per se* a form of reparation.[529]

C.1. Measures of Satisfaction: Publication of the Sentence

448. The **representatives** requested that the State be ordered to disseminate the sections of this ruling that refer to proven facts, the analysis of the violations of the American Convention and the regulatory section. To that effect, they indicated that this information must appear in newspapers with national circulation, as well as regional daily papers in Maranhão, Piauí, Mato Grosso and Tocantins, the states most affected by slave labor.

449. The **State** had no comment on this method of reparation.

450. The Court decrees, as it has stipulated in other cases,[530] that the State must publish, within a six-month time period, counting from the release of this Judgment: a) the Court's official summary of the current Ruling, one time only, in the Diário Oficial; b) the Court's official summary of the current Ruling, one time only, in a newspaper with wide circulation nationwide, and c) the entirety of the current Ruling, available for a year, on an official website.

451. The State must inform this Court immediately once it has made each one of these publications available, independently of the one-year time frame, in order to make its first report as set forth in the tenth resolution item of this Judgment.

C.2. Guarantee of Non-Repetition: Imprescriptibility of the Crime of Slave Labor

452. The **representatives** indicated that, because serious violations of human rights are involved, invoking the statute of limitations for the crime of slave labor is not compatible with the American Convention. As a result, they ask that the State establish the imprescriptibility of this crime and also adopt

[527] *Cf. Cabrera García and Montiel Flores v. México*, para. 215, and *Velásquez Paiz*, para. 230.
[528] *Cf. "Niños de la Calle" (Villagrán Morales et al.) v. Guatemala*. Reparations and Costs, May 26, 2001, C77, para. 84, and *Herrera Espinoza et al*., para. 220.
[529] *Cf. Neira Alegría et al. v. Perú*. Reparations and Costs, September 19, 1996, C29, para. 56, and *Herrera Espinoza et al*., para. 220.
[530] *Cf. Cantoral Benavides v. Perú*. Reparations and Costs, December 3, 2001, C88, para. 79, and *Herrera Espinoza et al*., para. 227.

all necessary measures so that the statute of limitations shall not be an obstacle to the investigation and possible sanction of the parties responsible for the facts of this case.

453. The **State** considered the request to declare imprescriptibility for the crime of slave labor inappropriate for various reasons. First, it considered imprescriptibility for crimes against humanity to refer only to the exercise of international criminal law and not to be an obligation of the States to establish it domestically. Secondly, it alleged that in this concrete case it is not possible to speak of a crime against humanity because there is not "a widespread or systematic attack directed at a civilian population," nor was there "a practice applied or tolerated by the Brazilian State." Lastly, the State indicated that Article 149 of the Brazilian Penal Code is particularly broad, spelling out a series of distinctly serious behaviors that cannot be classified as crimes against humanity.

454. Concerning the imprescriptibility of the crime of slavery, the Court concluded in section VIII-1 that invoking the statute of limitations in the present case represented a violation of Article 2 of the American Convention, as it was a decisive element in maintaining impunity for the facts confirmed in 1997. The Court has also confirmed the imprescriptible nature of the crime of slavery and its analogous forms in international law, by virtue of the nature of international law crimes, whose prohibition meets the status of *jus cogens* (*supra* para. 249). Furthermore, the Court restates, in accordance with its consistent jurisprudence,[531] that crimes which imply serious violations of human rights cannot be subject to statutes of limitations. As a result, Brazil cannot apply the statute of limitations to this case and other ones like it.

455. The Court observes that the alleged breadth of criminal categories set forth in Article 149 of the Brazilian Penal Code does not change the previous conclusion as the State suggests (*supra* paras. 307 to 314). In this case, the Court does not declare imprescriptible, in a general way, a crime prescribed by the Brazilian legal system (Article 149 cited above),[532] but rather only the conducts which constitute slavery or one of its analogous forms, in accordance with the provisions of this Judgment. The Court's decision obviously has the effect of declaring slavery and its analogous forms to be imprescriptible, independently of whether they correspond to one or more categories of crime within the Brazilian legal system. Consequently, this Tribunal must order the State, within a reasonable period of time after the issuance of this Judgment, to adopt necessary legislative measures to guarantee that the statute of limitations not be invoked for the crime of reducing people to slavery and its analogous forms, as explained in paragraphs 269 to 314 of the present Judgment.

C.3. Guarantee of Non-Repetition: Definition of Human Trafficking

456. The **representatives** indicated that in Brazil human trafficking is characterized as only existing for the purposes of sexual exploitation. In accordance with what the Palermo Protocol established, the State

531 *See*, among others, *Barrios Altos v. Perú*. Background, para. 41; *Trujillo Oroza v. Bolivia.* Reparations and Costs, February 27, 2002, C92, para. 106; *Almonacid Arellano et al.*, para. 112, and *Albán Cornejo et al. v. Ecuador*. Background, Reparations and Costs, November 22, 2007, C171, para. 111.

532 In this sense, by way of example, the Court restates that it did not rule that homicide was an imprescriptible crime in Chile in all cases, in the case of *Almonacid Arellano*.

must define human trafficking by following international standards to include economic exploitation as a motive for human trafficking as well.

457. The **State** alleged that this request is outside the *ratione materiae* jurisdiction of the Court. It asserted that the representatives cannot ask the Court to declare Brazil's possible non-compliance with respect to its obligation to criminalize human trafficking. Furthermore, it affirmed that slave labor and human trafficking are separate concepts and that the present case only deals with the former.

458. The Court observes that the fact that trafficking may be characterized as existing only for the purposes of sexual exploitation did not have any bearing on this case. In the Court's judgment, the instances of human trafficking in the present case are covered by Article 207 of the Brazilian Penal Code which reads: "Recruiting workers through deceit, with the intention to bring them from one locality to another within national borders: Penalty – imprisonment for one to three years and a fine." This Article was effectively applied in the investigation initiated after the audit in 1997, and it played a role in the criminal proceedings that resulted. Therefore the possible deficiencies in the characterization of human trafficking did not have any consequences for the impunity of the human rights violations identified in section VIII. Based on the above, the Court finds that it cannot grant the request of the representatives that Brazil modifies the definition of human trafficking in its domestic law.

C.4. Guarantee of Non-Repetition: Pending Legislation and Proportionality of Punishment

459. The **representatives** indicated that there is now legislation pending that would reduce the scope of the crime of slave labor by eliminating the mention of "exhaustive workday" and "denigrating work conditions." In consideration of the principle of irreversibility of fundamental rights, the representatives request that Brazil abstain from adopting legislative measures which signify a regression in the fight against slave labor. They also indicated that the penalties established for the crime of slave labor, two to eight years imprisonment, are too low, and they requested that the State establish new, more effective penalties proportional to the seriousness of the crimes.

460. The **State** alleged that the Court cannot rule in the abstract on the proportionality of a punishment assigned to the crime of slave labor and that the representatives did not indicate any Inter-American parameters violated by Brazil. It also noted that the proportionality of the punishment can only be considered with respect to a concrete case and that the range of two to eight years established in Brazilian law allows for a differentiated consideration of the various levels of gravity of conduct typically involved in the crime of slave labor.

461. The Court notes that, in general terms, it does not have the capacity to intervene in a State's domestic legislative debate. Moreover, ruling on pending legislation, regardless of its content, represents an abstract act that has no relation to the concrete protection of rights guaranteed by the American Convention. Therefore, the Court cannot accept the request of the representatives regarding the referenced pending legislation.

462. Concerning the proportionality of the punishment for the crime of reducing someone to a situation similar to that of a slave, the Court considers that the punishment for a crime such as this one must be proportional to the seriousness of the human rights violations involved. However, determining what the appropriate punishment for this crime is not the job of an international Tribunal. The Court observes that comparative legislation among States in the region does not offer a clear reference regarding what punishment must be established for these cases. The States that do recognize the specific crime of slave labor do not have similar sentencing guidelines for minimum and maximum penalties. Therefore the Court finds that the States bear the responsibility for determining the minimum penalty for this conduct in their criminal legislation, and that it is also within the State's jurisdiction to define the quantum of the penalties, since they are better situated to do so.

C.5. Guarantee of Non-Repetition: Public Policies

463. The **Commission** requested that the State adopt a series of public policies to prevent and sanction slave labor. They include: i) continuous implementation of public policies such as legislative and other such measures for the eradication of slave labor; in particular the State must monitor the application and sanction of people responsible for slave labor, at every level; ii) strengthening of the legal system and the creation of mechanisms of coordination between criminal jurisdictions and labor law jurisdictions in order to fill the gaps created in an investigation, prosecution and sanction of people responsible for the crimes of involuntary servitude and forced labor; iii) ensuring strict compliance with labor laws relating to the length of workdays and equal pay among salaried workers, and iv) adopting necessary measures to eradicate every kind of racial discrimination, specifically by launching campaigns to raise awareness among the national population and State officials, including justice officials, about discrimination and the subjugation of people to involuntary servitude and forced labor.

464. The **representatives** requested that the Court order the State to establish policies of cooperation between public authorities that allow for joint action among the Public Prosecutor's Office, Federal Police, the Ministry of Labor and other competent jurisdictional bodies. They indicated that the State must guarantee the recuperation and re-adaptation of people subjugated to slave labor, informing them promptly of their rights and of social programs that may benefit them. In particular, the State must establish public policy that includes the participation of Brazil's National Commission for the Eradication of Slave Labor to oversee the hiring of rural labor with the goal of preventing the rescued workers from being recruited for slave labor once again. They also requested that a Workforce Advocacy Center be constructed in the municipality of Barras, in the state of Piauí, where the majority of the victims in this case are from.

465. The representatives also asked that certain public policies which have been successful in the fight against slave labor be preserved. In particular, they requested that the Court declare the "Dirty List" and the *Portaria Interministerial 2/2015* compatible with the American Convention.

466. The **State** indicated that, pursuant to the American Convention, it already has the obligation to carry out adequate and effective criminal investigations. It alleged that the fulfillment of this obligation falls within the State's margin of discretion. It falls therefore within domestic jurisdiction, and not the Court's, to determine how to fulfill this obligation. It also alleged that only the State has jurisdiction to develop public policies relative to the rescue and rehabilitation of the workers. The State highlighted that there is already a pilot project in place for state oversight of rural workers. Lastly, it alleged that the Workforce Advocacy Center requested by the representatives has no relation whatsoever to the facts of the case.

467. The State noted that the "Dirty List" is currently suspended, pending a Federal Supreme Court decision on its constitutionality. It added that, in its opinion, the "Dirty List" is compatible with the American Convention, however it requested that the Court not impose any of its decisions on Brazilian Judicial Power while the constitutional ruling is pending.

468. The Court considers that there are still some obstructions in the fight against forced labor in Brazil, for example:

> a) The Brazilian State has faced obstacles to the development of public policies of prevention, such as the enormous size of the country, the lack of communications infrastructure and social inequality; the opposition of sectors affected by national policies for combatting slave labor, who diversify their actions contrary to said public policy;
>
> b) On December 23, 2014, the Federal Supreme Court suspended the list of slave-holding employers ("Dirty List"), based on unconstitutionality claim No. 5.209, which has not been resolved as of the issuance of this Ruling, and
>
> c) It has been noted that the Executive Branch has been limited by the lack of qualified personnel, a shortage of labor auditors, deficiencies in public facilities and state networks to meet demands; cutbacks in organizations like the Special Group for Mobile Audits and the Federal Police, who can act as logistical and legal officials in the battle against slave labor.

469. However, the Court points out that the Brazilian State, as of 1995, assumed the responsibility to implement diverse actions for the purpose of eradicating slave labor. Among them are several important measures highlighted below:

> a) In 1995, Decree No. 1.538 was issued, which created the Inter-Ministerial Group for the Eradication of Forced Labor and involved several ministries, coordinated by the Ministry of Labor, with the participation of various entities, institutions, and the ILO. In that same year, the State created the Special Group for Mobile Audits, under the supervision of the Ministry of Labor's Secretary of Labor Auditing, for the purposes of going into rural areas and investigating claims of slave labor, supporting the operations of the Inter-ministerial Group of the Eradication of Forced Labor. The Mobile Group has been considered to be an efficient instrument for the rescue of people from their status as slave laborers, for imposing administrative sanctions, paying

compensation and gathering evidence in those situations, so that the Federal Public Prosecutor and the courts may take action;

b) Apart from auditory functions, the State increased efforts of prevention and worker rehabilitation;

c) In 2002, the Public Ministry of Labor created the National Coordinating Committee for the Eradication of Slave Labor. In that same year, the Special Commission of the Council on the Rights of the Human Person presented the First National Plan for the Eradication of Slave Labor, in addition to issuing Law No. 10608/2002, relating to unemployment insurance for workers rescued from a situation of forced labor or condition analogous to slavery;

d) On December 11, 2003, Law No. 10803/2003 was passed, which modified the wording of Article 149 of the Brazilian Penal Code;

e) Through ordinances No. 540, on October 15, 2004, and No. 2, on May12, 2011, the Register of Offending Employers ("Dirty List") was introduced by the Ministry of Labor, with biannual updates. This list contains the names of offenders who employ workers in conditions of slavery so that financial institutions can consult it whenever loan requests are made;

f) On July 31, 2003, the National Commission for the Eradication of Slave Labor was formed, replacing the Inter-Ministerial Group for the Eradication of Forced Labor, created in 1995. This Commission involved the participation of a greater number of Brazilian state institutions and members of civil society, with the objective of articulating public policies for combatting slave labor. The Court has not lost sight of the fact that this institution has been classified by the ILO as a model that could serve as an example to other countries with similar problems;

g) In December of 2007, Brazil's Federal Supreme Court set definitive criteria in the extraordinary appeal RE No. 398041, which established the federal judiciary to be the court with jurisdiction over crimes relating to conditions analogous to slavery as set forth in Article 149 of the Brazilian Penal Code;

h) In 2008, the Second National Plan for the Eradication of Slave Labor was implemented. Also, for the purposes of disseminating public policy and educating the public on the matter, the National Day for Combatting Slave Labor was introduced via Law 12064/2009;

i) On June 22, 2010, Brazil's Central Bank issued Resolution No. 3876, which prohibited the granting of rural credit to physical and legal persons included in the Register of Employers who kept workers in conditions analogous to slavery;

j) On June 5, 2014, Constitutional Amendment No. 81 was issued and its Article 243 declared that urban and rural properties in every region of the country where exploitation of slave labor was to be found, would be expropriated;

k) The Court has received information that the Brazilian State has strengthened the activities of the Public Ministry of Labor and of the Federal Public Prosecutor, in order to promote criminal and civil proceedings whose goal is the State's exercise of its corrective capacities. It also developed technical procedural guidelines for the Ministry of Labor when they participate in procedural methodologies to eradicate slave labor;

l) At the levels of both labor and federal jurisdictions people found to be responsible for cases of reduction to a condition analogous to slavery have been convicted and also made to pay high fines;

m) Public policies have also been implemented to make basic services more universal, in addition to the civil registry, the development of the *Bolsa-Familia* [money transfer] program tied to school attendance and child vaccination, unemployment insurance, a national program of access to technical training and employment, as well as the prestigious Program to Eradicate Child Labor. The development of said public policies contributed to Brazil being removed from the FAO Hunger Map in 2014, and

n) The evidence file contains information about mechanisms of technical cooperation for broadening and fortifying activities throughout the country, among representatives from the National Justice Council, the ILO, the Public Ministry of Labor, the Federal Public Prosecutor, the Supreme Labor Court, the Secretary of Human Rights of the Presidency and the National Labor Union of Fiscal Labor Auditors. Also, in 2010, the criminal persecution of contemporary slavery was prioritized by the Federal Public Prosecutor's Second Chamber of Coordination and Revision in the entire country, which originated in a data base registry of information about i) inspection reports made since 1995 and their conclusions; ii) criminal investigation by police; iii) criminal investigation by the Federal Public Prosecutor; iv) revision of areas of responsibility; v) criminal proceedings carried forward and resulting punishment. The database also contains vi) a summary of the inspections; vii) interviews with workers, traffickers (*gatos*) and managers; viii) the notebook where workers' debts were tracked, complaints, police investigations and ix) photographs.

470. Due to the above, the Court considers that the actions and policies adopted by the State are sufficient and it does not deem it necessary to order additional measures. In particular, the Court highlights the active participation of the Federal Public Prosecutor in the inspections carried about by the Mobile Group for Combatting Slave Labor. Without prejudice to the foregoing, the Court urges the State to continue increasing the effectiveness of its policies and the interaction between the various bodies involved with combatting slave labor in Brazil, without allowing for any regression in the matter.

D. Other Requested Measures

471. The **Commission** requested that an investigation be carried out regarding the facts related to the disappearance of Iron Canuto da Silva and Luis Ferreira da Cruz. This investigation must be led impartially, effectively and within a reasonable time frame, with the purpose of clarifying the entirety of the facts, identifying responsible parties and imposing corresponding sanctions.

472. The Commission also requested that a mechanism be put in place to facilitate locating victims of slave labor and specifically Iron Canuto da Silva, Luis Ferreira da Cruz, Adailton Martins dos Reis and José Soriano da Costa, as well as the relatives of the first two, José Teodoro da Silva and Miguel Ferreira da Cruz, for the purpose of making reparations to them.

473. The **representatives** concur with the Commission, and the State had no comment on this request.

474. Taking into account that the Court concluded in section VIII-2 that Brazil did not violate the American Convention with respect to the disappearance of Iron Canuto da Silva and Luis Ferreira da Cruz, it is not possible to grant any sort of reparation in this matter.

475. Furthermore, the **representatives** requested two specific measures as symbolic reparation for the victims. First, they asked that a commemorative plaque about the facts of this case and this Court's Ruling be installed in some public place in the city of Sapucaia. Secondly, they requested that the State hold a public ceremony to recognize its international responsibility and ask forgiveness of the victims. In both cases, they asked that these measures include victim participation.

476. The **State** did not make objections regarding the general idea of symbolic reparations. However, it requested that the details of the commemorative plaque and the public ceremony be defined by the State without requiring consent from the victims. In the case the Court does not consider this to be adequate, the State requested that the Court itself define the content of these symbolic forms of reparations.

477. Regarding the measures of reparations aforementioned, the Court considers that the issuance of this Ruling and the reparations ordered in this section are sufficient and adequate to remedy the violations suffered by the victims, and the Court does not deem it necessary to order that a public act of recognition and responsibility be made, nor the installation of a commemorative plaque in Sapucaia.

E. Compensatory Payments

E.1. Material Damages

478. The **Commission** requested that the victims of this case receive adequate compensation, both with respect to material and moral damages. In particular, it asked that restitution be made to the workers for the salaries owed them for services rendered as well as for the sums of money illegally taken from them.

479. The **representatives** demand payment for all the labor rights not covered in the "Terms of Termination of Work Contracts (TTWC)" at the time the workers were rescued.

480. The **State** noted that it cannot respond to an exclusively labor-related damage whose compensation should be the responsibility of a private party. It added that the representatives did not put forward any evidence to prove the amounts of material damages in this case and that the invocation of equity cannot make up for these evidentiary deficiencies.

481. The Court has developed in its jurisprudence the concept of material damages and has established that they address "loss of or detriment to the victims' incomes, costs incurred in connection with the facts and consequences of a pecuniary character that have a causal link to the facts of the case."[533]

482. The Court will not grant any compensation for material damages in this case. The representatives did not present any evidence relative to their allegation that the amounts paid through the TTWC would have been insufficient under Brazilian Labor Law. The Court does not have any way to determine how to correctly calculate the TTWC payouts, whether in general terms or with regard to each one of the workers identified as a victim in this case. Consequently, the Court does not find itself in a position to determine: i) the sum that corresponds to each worker at the time of his rescue, and ii) the possible differences of each sum actually received by each worker. The two previous elements are indispensable in establishing the existence of material damages. Therefore, the Court dismisses the representatives' request on this matter.

E.2. Immaterial Damages

483. The **representatives** requested compensation for harms suffered by all the individuals identified as victims in their Pleadings, Motions and Evidence brief. Regarding immaterial damages they asked for $40,000 (U.S. Dollars) for each one of the workers found at Hacienda Brasil Verde in the April 1997 and March 2000 audit reports. Likewise, regarding the victims in the latter inspection, they asked for compensation for collective moral harm, calculated in fairness, intended for the construction of a rural technical course in Barras, Piauí, for the training of rural workers.

484. Additionally, in their final observations brief they asked for $40,000 (U.S. Dollars) for each worker rescued in the 1996 audit based on the concept of compensation for moral harms suffered. In that same brief they also requested compensation for moral damages due to the forced disappearance of Luis Ferreira da Cruz.

485. The **State** argued, in general terms, that it does not have the obligation to compensate for moral harm because the alleged violations of rights were carried out by private parties and not by the State. In this way, there would be no causal link between the alleged harms and the conduct of the State. It added that,

[533] *Cf. Bámaca Velásquez v. Guatemala*. Reparations and Costs, February 22, 2002, C91, para. 43, and *Flor Freire*, para. 251.

in case of violations to Articles 8 and 25 of the American Convention, the ruling itself would be sufficient reparation.

486. The Court has developed in its jurisprudence the concept of immaterial harm and it has established that it "can include both the sufferings and afflictions caused by the violation and the undermining of people's essential values and any alteration, of a non-pecuniary nature, in the victim's living conditions."[534] Given that it is not possible to assign an exact monetary value to an immaterial harm, it can only be a matter of compensation, for the purposes of comprehensive reparation to the victim, through the payment of a quantity of money or the delivery of goods or services having monetary value, that the Tribunal may determine as a reasonable implementation of judicial discretion and on equitable terms.[535]

487. In sections VIII-1 and VIII-2, the State was declared to bear international responsibility for the violations of rights established in Article 6 of the American Convention, in relation to Articles 1(1), 3, 5, 7, 11 and 22 of the Convention (*supra* para. 343), as well as rights established in Articles 8 and 25 of the same instrument (*supra* paras. 368, 382 and 420), in relation to Articles 1(1) and 2 of the Convention. In consideration of what has been stated and of the different violations declared in this Ruling with respect to different groups of workers based on facts and violations of a distinct nature, this Tribunal establishes in fairness the sum of $30,000.00 (U.S Dollars) for each one of the 43 workers found to be at Hacienda Brasil Verde during the April 23, 1997 audit and who were identified by the Court in this case (*supra* para. 199), and the sum of $40,000.00 (U.S. Dollars) for each one of the 85 workers found to be at Hacienda Brasil Verde during the March 15, 2000 audit and who were identified by the Court in the present case (*supra* para. 206).

488. The Court observes that the sums established in fairness for the payment of immaterial damages for each one of the workers found at Hacienda Brasil Verde in the 1997 and 2000 audits, compensate and form part of the comprehensive reparations to the victims, taking into consideration the suffering and afflictions they endured in their condition analogous to that of a slave. Moreover, even though the decision regarding a monetary figure falls within the ambit of judicial discretion, in this case it is close to what the representatives requested, and therefore considered to be reasonable and proportional to their request.

489. Regarding the request for reparation of collective moral harm, the Court observes that the compensatory indemnities ordered in this Ruling are sufficient and it does not deem it necessary to order additional reparations in this case.

F. Costs and Expenses

[534] *Cf. "Niños de la Calle" (Villagrán Morales et al.) v. Guatemala*. Reparations and Costs, para. 84, and Herrera Espinoza et al., para. 241.
[535] *Cf. Cantoral Benavides v. Peru*. Reparations and Costs. para. 53, and *Chinchilla Sandoval*, para. 308.

490. The **representatives** requested payment for expenses incurred in their participation in this case; from the presentation of their petition before the Commission until the proceedings before the Court.

491. The representatives indicated that the costs and expenses of the CPT amounted to $139.66. (U.S. Dollars) CEJIL's costs and expenses amounted to $105,108.25. (U.S. Dollars) The representatives broke down the previous figure in the following way: i) $45,764.54 (U.S. Dollars) for travel expenses; ii) $1,678.76 (U.S. Dollars) for shipping and copying expenses; iii) $2,770.29 (U.S. Dollars) for notary public and translation expenses; iv) $122.24 (U.S. Dollars) for expenses related to investigation; v) $54,591.48 (U.S Dollars) for salaries; and vi) $180.95 (U.S. Dollars) for long-distance telephone charges.

492. The State requested that, in the case of it not being found internationally responsible, it not be ordered by the Court to pay any amount for any costs or expenses. Specifically, it requested that the Court rule on the nature of the costs and expenses.

493. Additionally, in the case of it being ordered to pay costs and expenses, the State noted that it must be for reasonable amounts and duly proven to have direct relation to the concrete case. In particular, Brazil asserted that the lawyers' salaries do not meet this requirement because as simple estimates they would be impossible to corroborate.

494. The Court reiterates that, according to its jurisprudence, the costs and expenses fall within the concept of reparation, since the activities are carried out on the victims' behalf with the aim of obtaining justice, both nationally and internationally, imply expenditures that must be compensated when the State is declared to bear international responsibility by means of a conviction. Regarding the reimbursement for expenses, the Court must prudently appreciate its reach, which includes expenses generated before domestic legal authorities, as well as those generated in the course of the proceedings before the Inter-American court, taking into account the circumstances of the concrete case and the nature of international jurisdiction to protect human rights. This evaluation can be made based on the principle of fairness and taking into account the expenses noted by the parties, as long as the amounts are reasonable.[536] As it has noted on other occasions, the Court reiterates that providing evidentiary documents is not sufficient, but rather there is the requirement that the parties make an argument that relates the evidence to the fact that is considered represented and that, when it comes to alleged expenses incurred, it must be established with clarity in the guidelines and justification of the same.[537]

495. Upon examination of the aforementioned put forth as evidence, the Court concludes that some requested sums are justified and proven. Therefore, the Court declares that in fairness the State must pay the sum of $5,000.00 (U.S. Dollars) to the CPT, and $50,000.00 (U.S. Dollars) to CEJIL.

[536] *Cf. Garrido and Baigorria v. Argentina*. Reparations and Costs, August 27, 1998, C39, para. 82, and *Flor Freire*, paras. 261 and 262.
[537] *Cf.* Chaparro Álvarez and Lapo Íñiguez. v. Ecuador. Preliminary Objections, Background, Reparations and Costs, November 21, 2007, C170, para. 275, and Herrera Espinoza et al., para. 248.

G. Method of Fulfilling Ordered Payments

496. The State must make the indemnification payments for immaterial harm, as well as reimbursement of costs and expenses declared in this Ruling, directly to the people or organizations indicated in the same, within a year from the issuance of this Sentence, according to the terms in the following paragraphs.

497. In the case of a beneficiary dying before receiving his indemnification payment, it must be paid to his heirs, in accordance with applicable domestic laws.

498. The State must comply with its financial obligations through payments in U.S. dollars, or their equivalent in Brazilian currency, using the exchange rate according to U.S. New York Stock Market values on the day before the payment.

499. If for reasons attributable to a beneficiary of the indemnification or his heirs it is not possible to pay all or part of the determined amount within the indicated time frame, then the State will put the money in U.S. dollars into an account or Certificate of Deposit associated with the victim's name with a solvent Brazilian financial institution and under the most favorable financial conditions allowed under the law and State banking policy. If the indemnification money is not claimed within ten years, the amount will be returned to the State with interest earned.

500. The amounts allocated in this Ruling as indemnifications for immaterial damages, and as reimbursement for costs and expenses, must be delivered whole to the indicated individuals and organizations, according to the terms of this verdict, without any deductions for any reasons whatsoever.

501. In the case of the State finding itself in arrears, it must pay interest on the amount of the debt, according to default interest rates in the Federal Republic of Brazil.

X. RESOLUTIONS

508. Therefore,

THE COURT

DECIDES,

Unanimously,

1. To dismiss the Preliminary Objections put forward by the State regarding the inadmissibility of the submission of the case to the Court due to the Commission's publication of the Background Report; the lack of jurisdiction *ratione personae*, regarding the alleged unidentified victims, the ones identified

but not given powers of representation, the ones who did not appear in the Commission's Background Report or who were not related to the facts of the case; the lack of *ratione personae* jurisdiction over violations in the abstract; the lack of *ratione materiae* jurisdiction for the violation of the principle of subsidiarity of the Inter-American System (fourth instance objection); the lack of jurisdiction *ratione materiae* regarding the alleged violations of the prohibition of trafficking persons; the lack of *ratione materiae* jurisdiction over alleged violations of labor laws; the lack of previous exhaustion of domestic legal remedies, and invoking the statute of limitations regarding the petition before the Commission to make reparations for moral and material harm, as explained in paragraphs 23 to 28, 44 to 50, 54, 71 to 74, 78 to 80, 84, 89 to 93 and 98 of this Ruling.

2. To declare partially applicable the preliminary objection put forward by the State regarding the lack of *ratione temporis* jurisdiction with respect to facts before the date of State recognition of this Court's jurisdiction, and the lack of *ratione temporis* jurisdiction on facts prior to the State's adherence to the American Convention, as explained in paragraphs 63 to 65 of this Ruling.

DECLARES:

Unanimously, that:

3. The State is responsible for the violation of the right not to be subjected to slavery and human trafficking, as established in Article 6(1) of the American Convention on Human Rights, in relation to Articles 1(1), 3, 5, 7, 11 and 22 of the same instrument, to the detriment of the 85 workers rescued on March 15, 2000, at Hacienda Brasil Verde, listed in paragraph 206 of this Ruling, as explained in paragraphs 342 and 343 of this Ruling. Additionally, with respect to Antônio Francisco da Silva, this violation also occurred in relation to Article 19 of the American Convention on Human Rights, because he was a child at the time the facts occurred, as explained in paragraphs 342 and 343 of this Ruling.

By five votes in favor and one against, that:

4. The State is responsible for the violation of Article 6(1) of the American Convention, in relation to Article 1(1) of the same instrument, produced in the context of a situation of structural and historical discrimination, due to the economic status of the 85 workers identified in paragraph 206 of this Ruling, as explained in paragraphs 342 and 343 of this Ruling.

Judge Sierra Porto dissents.

Unanimously, that:

5. The State is responsible for violating the guarantees to due diligence and reasonable time frames, as set forth in Article 8(1) of the American Convention on Human Rights, in relation to Article 1(1) of the same instrument, to the detriment of the 43 workers found at Hacienda Brasil Verde during the audit on

April 23, 1997, and who were identified by the Court in paragraph 199 of this Ruling, as explained in paragraphs 361 to 382 of this Ruling.

By five votes in favor and one against, that:

6. The State is responsible for violating the rights to judicial protection, as set forth in Article 25 of the American Convention on Human Rights, in relation to Articles 1(1) and 2 of the same instrument, to the detriment of: a) the 43 workers found at Hacienda Brasil Verde during the audit on April 23, 1997, and who were identified by the Court in this litigation (*supra* para. 199), and b) the 85 workers at Brasil Verde Farm found during the audit on March 15, 2000, and who were identified by the Court in this litigation (*supra* para. 206). Also, regarding Antônio Francisco da Silva, this violation occurred in relation to Article 19 of the American Convention, all of the above as explained in paragraphs 383 to 420 of this Ruling.

Judge Sierra Porto dissents.

Unanimously, that:

7. The State is not responsible for violations of the rights to legal personality, life, personal integrity and personal liberty, legal guarantees and protection, as set forth in Articles 3, 4, 5, 7, 8 and 25 of the American Convention, in relation to Articles 1(1) and 19 of the same instrument, to the detriment of Luis Ferreira da Cruz and Iron Canuto da Silva nor to their family, as explained in paragraphs 421 and 426 to 434 of this Ruling.

AND ORDERS:

Unanimously, that:

1. This Ruling constitutes, *per se*, a form of reparation.

2. The State must reinitiate, with due diligence, the criminal investigations and/or proceedings that correspond to the facts confirmed in March 2000 in the present case in order to, within a reasonable amount of time, identify, prosecute and, if appropriate, sanction the responsible parties, in accordance with what was established in paragraphs 444 to 446 of this Ruling. The State must also re-establish (or reconstruct) penal process 2001.39.01.000270-0, initiated in 2001, before the 2nd District of the Federal Court of Marabá, in the state of Pará, in accordance with what was established in paragraphs 444 to 446 of this Ruling.

10. The State must, within six months of the issuance of this Ruling, publish the information stipulated in paragraph 450 of this Ruling, according to the terms explained therein.

11. The State must, within a reasonable amount of time after the issuance of this Ruling, adopt necessary measures to guarantee the statute of limitations not be applied to the international crime of slavery and its analogous forms, as explained in paragraphs 454 and 455 of this Ruling.

12. The State must pay the sums of money stipulated in paragraph 487 of this Ruling, as compensation for immaterial harm, and for reimbursement of costs and expenses, as explained in paragraph 495 of this Ruling.

13. The State must, within a year from the issuance of this Ruling, make a report to this Tribunal concerning the measures adopted to comply with it, without prejudice to what was established in paragraph 451 of this Ruling.

14. The Court will supervise full compliance with this Ruling, exercising its powers and in compliance with its own duties pursuant to the American Convention on Human Rights, and it will declare this case closed once the State has reached full compliance with this Ruling's orders.

Judges Eduardo Ferrer Mac-Gregor Poisot and Eduardo Vio Grossi jointly informed the Court of their individual opinions. Judge Humberto Antônio Sierra Porto informed the Court of his partially dissenting individual opinion.

Drafted in Spanish and Portuguese, the Spanish version being authentic, in San José, Costa Rica on October 20, 2016. [English translation September 2019 by Suzanne Corley.]

Ruling of the Inter-American Court of Human Rights. *Laborers at Hacienda Brasil Verde v. Brasil*. Preliminary Objections, Background, Reparations and Costs.

Eduardo Ferrer Mac-Gregor Poisot, President

Eduardo Vio Grossi

Humberto Antonio Sierra Porto

Elizabeth Odio Benito

Eugenio Raúl Zaffaroni

L. Patricio Pazmiño Freire

Pablo Saavedra Alessandri, Secretary

So ordered,

Eduardo Ferrer Mac-Gregor Poisot, President

Pablo Saavedra Alessandri, Secretary

SEPARATE OPINION OF
JUDGE EDUARDO FERRER MAC-GREGOR POISOT

LABORERS AT HACIENDA BRASIL VERDE v. BRASIL

OCTOBER 20, 2016 JUDGMENT

(Preliminary Objections, Background, Reparations and Costs)

Judge Elizabeth Odio Benito assented with Judge Eduardo Ferrer Mac-Gregor Poisot's opinion.

INTRODUCTION:
CONCERNING "HISTORICAL AND STRUCTURAL DISCRIMINATION" AS A RESULT OF THE ECONOMIC STATUS (POVERTY) OF THE WORKERS SUBJECTED TO SLAVE LABOR

1. This is the first time the Inter-American Court of Human Rights (IACHR) has had the opportunity to rule on the phenomenon of slave labor—which in this case involves forced labor, debt bondage and human trafficking—holding the State responsible for violating Article 6(1) of the American Convention on Human Rights, with respect to the 85 laborers—all men except for one woman—victims in the present case, rescued from Hacienda Brasil Verde.

2. The Inter-American Court examined the context of discrimination based on poverty within the phenomenon of slave labor in Brazil (which dates to mid-18th century), and which in a systematic way allowed its victims to be subject to human trafficking. The recognition the Inter-American Court has given to "poverty" as part of the prohibition on discrimination due to "economic status" has particular relevance for Inter-American jurisprudence—and in general for the Latin American context—[1] because it is the first time that poverty has been considered to be a component of the prohibition on discrimination because of "economic status" (a category that is expressly mentioned in Article 1(1) of the American Convention, unlike in other international treaties); and it is especially relevant that the declared violations existed "within a framework of a situation of historical and structural discrimination as regards the economic status of the 85 workers" in this particular case.[2]

3. I am issuing this separate opinion in consideration of the need to emphasize and elaborate on some elements of this case in relation to the recognition of poverty as part of the prohibition of discrimination due to economic status recognized in Article 1(1) and the identification of the circumstances of *historical and structural discrimination* as evidenced in the judgment. For greatest clarity, the following sections

[1] According to the Economic Commission for Latin America and the Caribbean: "Between 2013 and 2014, the number of poor people in the region increased by about 2 million people." According to their projections, the "poverty rate is about 29.2% and the extreme poverty rate is around 12.4%, which represents increases of 1.0 and 0.6 percentage points, respectively. Confirming these projections, 175 million people live in poverty according to 2015 incomes, 75 million of whom live in misery". Cf. UN Economic Commission for Latin America and the Caribbean, *Social Panorama of Latin America*, 2015, (LC/G.2691-P), Santiago, 2016, p. 18.

[2] IACHR, *Laborers at Brasil Verde Farm v. Brazil*. Preliminary Objections, Background, Reparations and Costs, October 20, 2016, C318, para. 341-43, and Resolution 4.

will expound upon: I) Poverty as part of the prohibition of discrimination due to "economic status" in the systems of protection of human rights (paras. 4-25); II) Poverty and economic status in Inter-American jurisprudence (paras. 26-44); III) Poverty as part of "economic status" contemplated in the American Convention in the present case (paras. 45-55); IV) Structural violations in international law (paras. 56-71); V) Structural, indirect and de facto discrimination in IACHR jurisprudence (paras. 72-80); VI) The reach of structural and historical discrimination in the Laborers at Hacienda Brasil Verde case (paras. 81-96), and VII) Conclusions (paras. 97-100).

I. POVERTY AS PART OF THE PROHIBITION OF DISCRIMINATION DUE TO "ECONOMIC STATUS" IN THE SYSTEMS OF PROTECTION OF HUMAN RIGHTS

4. This Court and the ECHR have concurred that human rights treaties are living instruments whose interpretation has to keep up with the evolution of the times and general rules of interpretation enshrined in Article 29 of the American Convention, as well as those in the Vienna Convention on the Law of Treaties. This evolving interpretation must not only apply to the interpretation of the rights established in Articles 3 and 26 of the American Convention, but it also must be taken into consideration when defining special categories of protection in light of Article 1(1).[3]

5. Therefore in interpreting the American Convention the most favorable alternative for the protection of rights protected in said treaty must be chosen, according to the principle of the standard most favorable to the human being.[4] In its interpretative task, the Court has expressed that the American Convention does not contain an explicit definition of the concept of "discrimination," nor of which groups are "subject to discrimination;" however, on the basis of various references in the *corpus juris* on the subject, the Inter-American Court has indicated that discrimination is related to:

> any distinction, exclusion, restriction or preference based on certain motives, such as race, color, sex, language, religion, political or any other opinion, national or social origin, property, place of birth or whatever other social circumstances, and whose purpose or result is the abrogation or undermining of the recognition, enjoyment or exercise, in conditions of equality, of human rights and liberties fundamental to all people.[5]

[3] In this sense, the IACHR has considered that: "This orientation acquires particular relevance in international human rights law, which has advanced a lot through the evolving interpretation of international instruments of protection. Such evolving interpretation is consistent with the general rules of interpretation of treaties enshrined in the 1969 Vienna Convention. This Court, in addition to the Consulting Opinion on the Interpretation of the American Declaration on the Rights and Duties of Man (1989), as well as the European Court of Human Rights, in cases like *Tyrer v. United Kingdom* (1978), *Marckx v. Belgium* (1979), *Loizidou v. Turkey* (1995), among others, has indicated that human rights treaties are living instruments, whose interpretation has to accompany the evolution of the times and the conditions of contemporary lives".. Cf. IACHR. *The Right to Information about Consular Assistance in the Framework of Guarantees to Legal Due Process*. Consulting Opinion 16/99, October 1, 1999, A 16, para. 114.

[4] *Cf.* IACHR. *Atala Riffo et al. v. Chile*. Background, Reparations and Costs, February 24, 2012, C239, para. 84; *"Masacre de Mapiripán" v. Colombia*. September 15,2005, C134, para. 106; *Ricardo Canese*. Background, Reparations and Costs, August 31, 2004 C111, para. 181, and *Herrera Ulloa*. Preliminary Objections, Background, Reparations and Costs, July 2, 2004, C107, para. 184.

[5] *Cf.* Inter-American Court. *Gonzales Lluy et al. v. Ecuador*. Preliminary Objections, Background, Reparations and Costs, September 1, 2015, C298, para. 253; and *Atala Riffo et al. v. Chile*. Background, Reparations and Costs, February 24, 2012,

6. In this context, international law and constitutional law have generally identified a certain set of circumstances which, based on the motives mentioned above, would have to be justified in an objective and reasonable way in order not to be considered a violation of the right to the freedom of enjoyment and guarantee of human rights recognized in international treaties or in constitutions. However, what is certain is that the list above is neither absolute nor literal because in many cases—as in the case at hand— it is necessary to demarcate the content of these categories in order to apply them to a concrete case.

7. For example, "poverty" has not been recognized explicitly as a category for special protection; that does not signify, however, that poverty cannot be appreciated as part of a category which is recognized explicitly or otherwise incorporated into "other social circumstances." Various systems of protection of human rights (regional and universal) have their own particularities regarding the recognition of poverty as part of the category of prohibition against discrimination "due to economic status;" this has not been an impediment to the permeation of obligations concerning the eradication of poverty, although not as a part of a category of special protection, but as an aggravating situation of the social conditions in which people live, which can vary from case to case.

i) European System of Human Rights

8. Article 14 of the European Convention on Human Rights (ECHR) and Article 1 of Protocol 12 of the ECHR establish the framework of equal protection (subordinate and autonomous, respectively):

> ARTICLE 14. Prohibition of discrimination. The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.[6]
>
> ARTICLE 1 of Protocol 12. General Prohibition of Discrimination. 1. The enjoyment of rights recognized by law shall be guaranteed without discrimination, especially on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.[7]

9. Concerning the scope of Article 14 of the European Convention (Prohibition of discrimination in light of Convention guidelines) and of Article 1 of Protocol No. 12 (Prohibition of discrimination in light of internal regulations), the European Court has specified that in spite of the "difference" in scope between them (Convention regulations and internal ones), the interpretation of "prohibition of discrimination" is identical in both sets of guidelines; therefore, the European Court applies the same interpretation of the

C239, para. 81. UN General Assembly International Covenant on Civil and Political Rights. UN Committee on Human Rights, General Observation No. 18, No discrimination, November 10,1989, CCPR/C/37, para. 6. Said Committee expanded that definition to have universal scope, based on definitions of discrimination established in Article 1(1) of the International Convention on the Elimination of all Forms of Racial Discrimination and in Article 1(1) of the Convention on the Elimination of All Forms of Discrimination against Women.

6 European Convention on Human Rights, approved in 1951, Art. 14.

7 Protocol 12 to the European Convention on Human Rights, November 4, 2000, Art. 1.

prohibition of discrimination that has developed in light of Article 14 of the European Convention and Article 1 of Protocol No. 12.[8]

10. Independently of the above, the European Convention does not cover discrimination due to economic status or explicitly due to poverty, which has not been an obstacle to the European Court developing jurisprudence with regard to the economic conditions that many of its victims have confronted.

11. Article 14 of the ECHR has been associated in an implicit, incidental or indirect way with respect to the rights and freedoms protected by the ECHR. The prohibition of discrimination set out in the European Convention has been related to the right to life (Art. 2 of the ECHR) due to the conditions of life or assistance;[9] the prohibition of cruel, inhuman or degrading treatment or regarding private and family life (Articles 3 and 8 of the ECHR) as relates to a decent standard of living,[10] or the right to the protection of private and family life (Art. 8 of the ECHR) with respect to the deprivation of custodial rights to children and placing them in a state institution[11] and the right to property (Art. 1 of Protocol No. 1 of the ECHR).[12]

12. A fact that stands out in the European system can be found in Article 30 of the European Social Charter, which *protects people against poverty and social exclusion*, for which the States pledge "to adopt measures within a global and coordinated framework to promote effective access, in particular to work, housing, training, education, culture, social and medical assistance, for people and families who run the risk of being in a situation of social exclusion or poverty".[13]

13. This precept of the European Social Charter is explicitly aimed at alleviating poverty and social exclusion by forcing the States to have a comprehensive approach to these problems. There, poverty is understood to include people in families which have suffered extreme poverty for generations as well as those who are temporarily exposed to the risk of suffering it. The Charter understands social exclusion to be the situation of people who find themselves in a position of extreme poverty due to an accumulation of disadvantages, who suffer degrading situations or occurrences, whose rights to receive certain benefits (offered by the State) may have expired long ago or whose situations are a product of concurrent circumstances.[14]

ii) African System of Human Rights

14. The African Charter on Human and Peoples Rights stipulates in its Article 2 that "[e]very individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present

8 *Cf*. ECHR. *Zornic v. Bosnia and Herzegovina*, No. 3681/06, July 15, 2014, para. 27.
9 *Cf*. ECHR. *Nencheva v. Bulgaria*, No. 48609/06, June 18, 2013.
10 *Cf*. ECHR. *Moldovan et al. v. Romania*, no. 41138/98, July 12, 2005 and *O'Rourke v. United Kingdom*, No. 39022/97, June 26, 2001.
11 *Cf*. ECHR. *Wallova and Wallov v. Czech Republic*, No 23848/04, October 26, 2006.
12 *Cf*. ECHR. *Öneryildiz v. Turkey*, No. 48939/99, November 20, 2004.
13 European Social Charter, approved October 18, 1961, Art. 30.
14 Urfan Khaliq and Robin Churchill, *The European Committee on Social Rights: Putting Flesh on the Skeleton of the European Social Charter*, in Malcolm Langford (ed.) *Theory and Jurisprudence of Social Rights. Emerging Trends in International and Comparative Law*, Bogotá, Siglo del Hombre Editores- Universidad de los Andes, 2013.

Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status". Here, neither economic position nor poverty are categories of special protection, which does not prevent them from being incorporated into "or other status".

15. In *Endorois v. Kenya*, the African Commission on Human and Peoples Rights considered that within the violation of Article 17(2) (community participation in cultural life) and 17(3) (protection of cultural values) the State should have taken positive action to eradicate the difficulties that the indigenous communities confronted, among them being extreme poverty. It ruled that:

> 48. [...] the Respondent State has a higher duty in terms of not only taking positive steps to protect groups and communities like the Endorois, but also to promote cultural rights, including the creation of opportunities, policies, institutions and other mechanisms that allow for different cultures and ways of life to exist, develop in view of the challenges facing indigenous communities. These challenges include exclusion, exploitation, discrimination and extreme poverty […].[15]

16. If the African Charter constitutes one of the most progressive instruments with regard to the incorporation of rights—in explicitly recognizing the Right to Development in its Article 22— what is certain is that the African System has not had great developments in its jurisprudence concerning poverty or economic status,[16] largely due to the context of the African continent.

iii) Universal System of Human Rights

17. Concerning the Universal System of Human Rights, four instruments have defined how "discrimination" must be understood: i) ILO Convention 111 concerning Discrimination in Respect of Employment and Occupation (1958);[17] ii) UNESCO Convention against Discrimination in Education

[15] ACHPR, Case 276/03: Center for Minority Rights Development (Kenya) and *Minority Rights Group (on behalf of Endorois Welfare Council) / v. Kenya,* November 25, 2009.

[16] Article 22 of the African Charter on Human and Peoples Rights stipulates that: 1. All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind and 2. States shall have the duty, individually or collectively, to ensure the exercise of the right to development. The African System of Human Rights presents fewer problems when it comes to enforcing economic, social and cultural rights. As mentioned earlier, the 1981 African Charter on Human and Peoples Rights considers civil and political rights as well as economic, social and cultural ones. Manisuli Ssenyonjo, "Economic, Social and Cultural Rights in the African Charter", in Ssenyonjo (ed.), *The African Regional Human Rights System: 30 Years After the African Charter on Human and People's Rights*, Leiden-Boston, Martinus Nijhoff Publishers, 2012, p. 57. Also see: Sisay Alemahu Yeshanew, *The Justiciability of Economic, Social and Cultural Rights in the African Regional Human Rights System*, Cambridge, Intersentia, 2013, p. 241.

[17] Article 1(1) of the Convention states: "For the purpose of this Convention the term "discrimination" includes: (a) any distinction, exclusion or preference made on the basis of race, color, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing quality of opportunity or treatment in employment and occupation; [and] (b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment as may be determined by the Member concerned after consultation with representative employers' and workers' organizations, where such exist, and other appropriate bodies."

(1960);[18] iii) International Convention on the Elimination of All Forms of Racial Discrimination (1965);[19] and iv) Convention on the Elimination of All Forms of Discrimination against Women (1979).[20] These definitions recognize as explicit categories the prohibition of discrimination because of race, color, lineage or national origin, ethnic origin, social origin, sex, religion, language, political or other opinion, birth, national heritage or social origin. Regarding "economic condition," only the UNESCO Convention against Discrimination in Education recognizes this motive for discrimination.

18. The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (1966) both consider the prohibition of discrimination because of economic conditions.[21] The Committee on Economic, Social and Cultural Rights, in its General Comment No. 20, has indicated that economic growth has not, in itself, led to sustainable development, and individuals and groups of individuals continue to face socio-economic inequality, often because of entrenched historical and contemporary forms of discrimination.[22]

19. The Committee on Economic, Social and Cultural Rights has also confirmed that discrimination against some groups persists, is omnipresent, is frequently rooted in the behavior and organization of society and often implies acts of indirect or unquestioned discrimination. This systematic discrimination (and historical in some cases) can consist in legal and political regulations or cultural attitudes predominant in the public or private sector that generate comparative disadvantages for some social groups and privileges for others.[23]

[18] Article 1(1) of the Convention states: "For the purposes of this Convention, the term 'discrimination' includes any distinction, exclusion, limitation or preference which, based on race, color, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education (...)".

[19] Article 1(1) of the Convention states: "In this Convention the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition of the enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life."

[20] Article 1 of the Convention states: "For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."

[21] The International Covenant on Civil and Political Rights stipulates in Article 2(1): Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

The International Covenant on Economic, Social and Cultural Rights establishes in Article 2(2) that: "The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

[22] *Cf.* The Committee on Economic, Social and Cultural Rights, General Comment No. 20, *Non-Discrimination in Economic, Social and Cultural Rights* (Art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), July 2, 2009, E/C.12/GC/20, para. 1.

[23] *Cf.* The Committee on Economic, Social and Cultural Rights, General Comment No. 20, *Non-Discrimination in Economic, Social and Cultural Rights* (Art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), July 2, 2009, E/C.12/GC/20, para. 12.

20. Regarding economic status as a category for special protection, the Committee on Economic, Social and Cultural Rights has indicated that, as a prohibitive motive for discrimination, it is a broad concept that includes real estate and personal property or lack thereof[24] which is to say, one of the facets of poverty. On this point, the Committee on Economic, Social and Cultural Rights has considered poverty to be a human condition characterized by the continuous or chronic deprivation of resources, skills, options, security and power necessary for the enjoyment of an adequate standard of living and other civil, cultural, economic, political and social rights.[25]

21. The UN's Guiding Principles on Extreme Poverty and Human Rights defines extreme poverty as "a combination of the deprivation of income, lack of human development and social exclusion,"[26] in which a prolonged lack of basic security affects various areas of existence at the same time, seriously compromising the possibilities for people to exercise or recover their rights in the foreseeable future.[27]

22. The UN's Guiding Principles on Extreme Poverty and Human Rights also states that:

> 3. Poverty is an urgent human rights concern in itself. It is both a cause and a consequence of human rights violations. Extreme poverty is characterized by multiple and interconnected violations of civil, political, economic, social and cultural rights, and also people living in poverty generally experience regular denials of their dignity and equality.
>
> 4. People living in poverty are confronted by the most severe obstacles—physical, economic, cultural and social—in accessing their rights and entitlements. Consequently, they experience many interrelated deprivations—including dangerous work conditions, unsafe housing, lack of nutritious food, unequal access to justice, lack of political power and limited access to health care—that prevent them from realizing their rights and perpetuate their poverty. Persons experiencing extreme poverty live in a vicious cycle of powerlessness, stigmatization, discrimination, exclusion and material deprivation, which all mutually reinforce one another.[28] (Emphasis added.)

23. The Special Rapporteur for Extreme Poverty and Human Rights has observed that people living in poverty are subject to discrimination because of the poverty itself, and also often because they belong to other unfavored sectors of the population, such as indigenous peoples, people with disabilities, ethnic minorities and people living with HIV/AIDS, among others.[29] Which is to say, if in general people living

[24] *Cf.* The Committee on Economic, Social and Cultural Rights, General Comment No. 20, *Non-Discrimination in Economic, Social and Cultural Rights* (Art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), July 2, 2009, E/C.12/GC/20, para. 25.
[25] UN Social and Economic Council, Committee on Economic, Social and Cultural Rights, *Substantive Issues Raised in the Application of the International Covenant on Economic, Social and Cultural Rights: Poverty and the International Covenant on Economic, Social and Cultural Rights*, May 10, 2001, E/C.12/2001/10, para. 8.
[26] UN Guiding Principles on Extreme Poverty and Human Rights, approved by the Council on Human Rights, September 27, 2012, Resolution 21/11, principle 2.
[27] UN Social and Economic Council, Sub-commission for the prevention of discrimination of minorities, *Fulfilling Economic, Social and Cultural Rights, Final Report of the Special Rapporteur on Extreme Poverty,* June 28, 1996, see E/CN.4/ Sub.2/1996/13, p. 58.
[28] UN Guiding Principles on Extreme Poverty and Human Rights, approved by Council on Human Rights, September 27, 2012, Resolution 21/11, principles 3 and 4.
[29] UN Council on Human Rights, Report of the Special Rapporteur on extreme poverty and human rights, March 11, 2013, A/HRC/23/36 para. 42.

in conditions of poverty coincidentally also belong to vulnerable segments of the population (women, children, people with disabilities, indigenous groups, Afro-descendants, senior citizens, etc.), it does not exclude the possibility of people living in situations of poverty not being associated with another category.

24. This tendency has also been noted by UN Rapporteurs who make a distinction between traditionally recognized groups and people who live in conditions of poverty, recognizing them as people who deserve special protection with respect to the guarantee of internationally recognized human rights.

25. On that subject we find pronouncements from the UN Special Rapporteurs about: i) the trafficking in persons, especially women and children;[30] ii) the right to water;[31] iii) human rights defenders;[32] iv) the right to education;[33] v) the question of human rights obligations related to the enjoyment of a clean, healthy, sustainable and risk-free environment;[34] vi) the right to adequate housing;[35] and vii) the right to food.[36]

II. POVERTY AND ECONOMIC STATUS IN INTER-AMERICAN JURISPRUDENCE

26. The theme of poverty and economic status has been present throughout the jurisprudence of this Inter-American Tribunal; many human rights violations involve situations of exclusion and marginalization due

30 The Special Rapporteur on trafficking in persons, especially women and children, has highlighted that poverty is an important factor in the vulnerability of victims of human trafficking. *Cf.* UN Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, August 6, 2014, A/69/269, para.12.

31 The Special Rapporteur on the right to water has expressed that the States must meet their human rights obligations relating to sanitation in a non-discriminatory way. They are obligated to pay attention to groups particularly vulnerable to exclusion and discrimination with regard to sanitation such as, among others, *people living in poverty* […]. Priority must be given to the satisfaction of these groups' needs and, when necessary, positive measures must be adopted to correct existing discrimination and guarantee access to sanitation services. In this way, the States are obliged to eliminate discrimination *de jure and de facto* for various reasons. *Cf.* UN Council on Human Rights, *Independent Expert Report on the Question of Human Rights Obligations Related to Access to Potable Water and Sanitation*, Catarina Albuquerque, July 1, 2009, A/HRC/12/24, para. 65.

32 The Special Rapporteur on human rights defenders has expressed that, concerning the question of human rights defenders, there have been reports about the risks confronted by human rights defenders in local communities, including indigenous populations, minorities and people who live in conditions of poverty. *UN Special Rapporteur Report on the Situation of Human Rights Defenders,* Margaret Sekkagya, August 5, 2013, A/69/262, para. 15.

33 The Special Rapporteur on the right to education has stated that there must be specific resources made available to address the basic causes for denying education to girls, children living in poverty or with disabilities, ethnic and linguistic minorities, migrants and other marginalized and disadvantaged groups. UN, Special Rapporteur Report on the Right to Education, Kishore Singh, August 5, 2011, A/66/269, para. 47.

34 The Special Rapporteur for human rights and the environment has explained that, as the Council on Human Rights has recognized, populations already vulnerable due to factors such as geographic location, poverty, gender, age, indigenous or minority status, national or social origin, birth or any other social situation, as well as disabilities, suffer the worst effects of climate change. *UN Special Rapporteur for Human Rights and the Environment on the Question of Human Rights Obligations Related to the Enjoyment of a Clean, Hhealthy, Sustainable and Risk-Free Environment*, John H. Knox, February 1, 2016 A/HRC/31/52 , para. 27.

35 The Special Rapporteur on the right to adequate housing has spoken out about inequality of access to land and property, which affects marginalized groups (including women, migrants and all people living in poverty), and is entrenched in the inequity of material and property wealth and segregation, and which has divided cities between those who have land and property and those who do not. *UN Special Rapporteur Report on Adequate Housing as an Integral Part of the Right to an Adequate Standard of Living and on the Right to Non-Discrimination*, Leilani Farha, August 2, 2015, A/70/270, para. 54

36 The Special Rapporteur on the right to food has observed that, for example, agricultural workers are in an especially vulnerable situation because 60% of them live in poverty in numerous countries. *UN Special Rapporteur Report on the Right to Food*, Olivier De Schutter, September 8, 2008, A/HRC/9/23, para. 16.

to situation of poverty of victims. Until now, in the totality of the cases, poverty has been identified as a factor of vulnerability which intensifies the impact that human rights violations have on the victims.

27. In *Instituto de Reeducación del Menor v. Paraguay* (2004), with respect to reparations, this Court was aware that the case involved children found to be living in poverty and who had been victims of serious human rights violations.[37]

28. In *Comunidad Moiwana v. Suriname* (2005), the Inter-American Court deemed it proven that members of said community had been forced to abruptly leave their houses and traditional homelands, and then found themselves continuously displaced, in French Guyana or other parts of Suriname. Likewise, this Court considered the members of that Community to have suffered from poverty and hardship from the time they fled the Aldea de Moiwana, given that the possibility of using their traditional methods of subsistence had been drastically reduced.[38]

29. In *Servellón García v. Honduras* (2005), this Court considered the States to bear the obligation to ensure the protection of children and adolescents affected by the poverty that left them socially marginalized. Here the Court pointed out, as it had in *"Niños de la Calle" (Villagrán Morales et al.) v. Guatemala,* that if the States had reason to believe that children in risky situations were affected by factors that could lead them to commit illicit acts, extreme measures were necessary to prevent the crime. The State should assume its special position of guarantee with great caution and responsibility and take special measures rooted in the principle of the child's best interests.[39]

30. In *Comunidad Indígena Yakye Axa v. Paraguay* (2005), *ad-hoc* Judge Ramón Foguel in his partly assenting and partly dissenting opinion, explained that the extreme poverty of the indigenous communities in the case, especially those affected by hard-core poverty, implied the systematic denial of the possibility of enjoyment of rights inherent to the human being. For the *ad-hoc* judge, the Yakye Axa Community was truly affected by extreme poverty.[40] The ad-hoc judge also suggested that on this point that the IACHR's ruling must be taken into consideration in the sense that the interpretation of an international instrument of protection must keep up with the evolution of the times and the conditions of contemporary lives because the Court also indicated that their evolving interpretation, according to the general rules of interpretation of treaties, has contributed in a significant way to advances in International Human Rights Law.[41]

[37] IACHR. *"Instituto de Reeducación del Menor" v. Paraguay.* Preliminary Objections, Background, Reparations and Costs, September 2, 2004, C112, para. 262.
[38] IACHR. *Comunidad Moiwana v. Suriname*. Preliminary Objections, Background, Reparations and Costs, June 15, 2005, C124, para. 186
[39] IACHR. *Servellón García et al. v. Honduras.* September 21,2006, C152, para 116.
[40] IACHR. Dissenting opinion of Ad Hoc Judge Ramón Foguel Pedroso in *Comunidad Indígena Yakye Axa v. Paraguay*. Background Reparations and Costs, June 17, 2005, C125, para. 28.
[41] IACHR. Dissenting opinion of Ad Hoc Judge Ramón Foguel Pedroso in *Comunidad Indígena Yakye Axa v. Paraguay*. Background Reparations and Costs, June 17, 2005, C125, para. 32.

31. Continuing this line of thought, the *ad-hoc* judge indicated that, in his opinion, in the evolving interpretations of the right to life which is enshrined in the American Convention, the socio-economic situation of Paraguay and the majority of Latin American countries must be taken into consideration, marked as they are by a growth in extreme poverty, in absolute and relative terms, despite the implementation of social protection policies. For Judge Foguel, the interpretation of the right to life not only involves observing State compliance with the provision of social protections that temporarily guarantee minimal living conditions, but also addressing the underlying causes of the production of poverty, which reproduce its conditions and therefore produce more poor people. The judge observes that the aforementioned raises the need to link methods of eradication of poverty with the totality of phenomena that originate it, keeping in mind the influence of decisions made at state, multinational and multilateral levels because the reproduction of the conditions of poverty implies responsibilities on the part of national and international actors and institutions.[42] He concluded in this way:

> 36. Advances in International Human Rights Law require the international community to assume that poverty, and particularly dire poverty, is a form of denial of all human rights (civil, political, economic, social and cultural) and to consequently act in order to facilitate the identification of perpetrators on whom international responsibility falls. The system of economic growth tied to a form of globalization that makes growing sectors poorer constitutes a "massive, flagrant and systematic violation of human rights," in a world growing increasingly interdependent. In this interpretation of the right to life that keeps up with the evolution of the times and the conditions of contemporary life, attention must be paid to the causes that produce extreme poverty and to the perpetrators behind them. In this perspective the State's international responsibilities are never ending [...] and the same goes for other State signatories in the International Community requiring new instruments.[43]

32. In *Masacre de Mapiripán v. Colombia* (2005), the IACHR confirmed that, given the characteristics of the massacres, the harms the families suffered, combined with the fear other family members had that similar events would be repeated, the threats and intimidation some people received from the paramilitaries, as well as giving testimony or having given it, led to the internal displacement of many families from Mapiripán. The IACHR also considered it possible that some of the displaced family members were not living in Mapiripán at the time of the facts but somewhere nearby, yet they still felt they needed to move as a consequence of the events. The IACHR confirmed that, as was evident from the testimonies themselves, many of these people had confronted serious conditions of poverty and lack of access to many basic services.[44]

33. In *Comunidad Indígena Sawhoyamaxa v. Paraguay* (2006), the IACHR established that the international responsibility of the States within the guidelines of the American Convention begins the moment a violation occurs against the general obligations recognized in Articles 1(1) and 2 of said treaty. Special duties are derived from these general obligations, their function to be determined by the particular

[42] IACHR. Dissenting opinion of Ad Hoc Judge Ramón Foguel Pedroso in *Comunidad Indígena Yakye Axa v. Paraguay*. Background Reparations and Costs, June 17, 2005, C125, para. 33.
[43] IACHR. Dissenting opinion of Ad Hoc Judge Ramón Foguel Pedroso in *Comunidad Indígena Yakye Axa v. Paraguay*. Background Reparations and Costs, June 17, 2005, C125, para. 36.
[44] IACHR. *"Masacre de Mapiripán" v. Colombia*. September 15, 2005, C134, para. 180.

necessities of protection of the subject of the law, whether for a personal situation or the specific situation of being in extreme poverty, marginalization, or childhood.[45]

34. In *Ximenes Lopes v. Brazil* (2006), the IACHR took into consideration that the groups who live in adverse conditions and with fewer resources, such as people living in conditions of extreme poverty, children, adolescents in dangerous situations and indigenous populations, face increased risks because they have special needs [...]. The IACHR observed that there was a direct and significant link between disability on the one hand and poverty and social exclusion on the other. Therefore, among the positive measures the State was responsible for were the ones necessary to prevent preventable disabilities and give people with some kind of limitation the appropriate preferred treatment for their condition (special vulnerability).[46]

35. In *Comunidad Indígena Xákmok Kásek v. Paraguay* (2010), the IACHR highlighted extreme poverty and lack of adequate medical attention to pregnant and postpartum women which were causes of high mortality and morbidity. Consequently, the States had to offer adequate health policies that allow for the provision of adequately trained personnel to assist in childbirth, prevention policies for maternal mortality through prenatal and postpartum care, as well as legal and administrative instruments for health policies that allow for proper documentation of maternal deaths. All of the foregoing is due to the fact that pregnant women require special measures of protection.[47]

36. In *Rosendo Cantú et al. v. México* (2010), the IACHR indicated, in accordance with Article 19 of the American Convention, that the States had to assume a special position of guarantor with more care and responsibility, and had to take special and careful measures based on the principle of the best interests of the child. In that sense, the State must pay special attention to the needs and rights of children, who are in a particular condition of vulnerability. In this case, in accordance with its conventional obligations, the State should have adopted special methods in favor of Rosendo Cantú, not only during the criminal indictment, but also during the whole time in which, as a child, she was tied to ministerial investigations carried out because of the reported crime, especially because it involved an indigenous woman, and because indigenous children whose communities are affected by poverty find themselves in a special situation of vulnerability.[48]

37. In *Furlan et al. v. Argentina* (2012), reiterating the relationship between poverty and disability,[49] the IACHR observed that the childhood protective services social worker was not informed by the judge of the civil proceedings while Sebastián Furlan was still a child, when there were expert reports that showed

[45] IACHR. *Comunidad Indígena Sawhoyamaxa v. Paraguay*. Background, Reparations and Costs, March 29, 2006, C146, para. 154.
[46] Corte IDH. *Ximenes Lopes v. Brazil*. July 4, 2006, C149, para. 104.
[47] IACHR. *Comunidad Indígena Xákmok Kásek v. Paraguay*. Background, Reparations and Costs, August 24,2010, C214, para. 233.
[48] IACHR. *Rosendo Cantú et al. v. México*. Preliminary Exception, Background, Reparations and Costs, August 31, 2010, C216, para. 201.
[49] IACHR. *Furlan et al. v. Argentina*. Preliminary Objections, Background, Reparations and Costs, August 31, 2012, C246, para. 201.

the severity of his disability; which is why Sebastián Furlan did not have a guarantee, which is obligatory at the national level, and there could have also been intervention through the legal aid he was entitled to, to help him through the civil process. With that in mind, in the specific circumstance of the case, the IACHR noted that the social worker constituted an essential tool for confronting Sebastián Furlan's vulnerability because of the negative effect created by the interrelation of his disability and the scarce economic resources available to him and his family, creating a situation where the poverty of his environment had a disproportionate impact on his condition as a person with a disability.[50]

38. In *Uzcátegui et al. v. Venezuela* (2012), regarding the right to property, the IACHR observed that due to the circumstances in which everything occurred and, especially, due to the socio-economic condition of vulnerability of the Uzcátegui family, harms done to the property during the raid had a greater effect on them than it would have had on other families. Here, the IACHR decided that the States must take into account that groups of people who live in adverse circumstances and with fewer resources, such as people living in poverty, face an increase in the level in which their rights are affected precisely because of their situation of greater vulnerability.[51]

39. In the context of domestic armed conflict and the application of International Humanitarian law, the IACHR has observed that people in situations of poverty, given their socio-economic condition and vulnerability, confront the violation of their human rights differently (and to a greater degree) than other people or groups in contrasting conditions.[52] In *Masacre de Santo Domingo v. Colombia* (2012), the IACHR proved that after the inhabitants of Santo Domingo had to abandon their homes and become displaced, as a consequence of the violent acts they had been subject to, looting began to happen in some of the houses and shops in Santo Domingo, causing harm and destruction to moveable and immoveable assets.[53]

40. In *Artavia Murillo et al. (In Vitro Fertilization) v. Costa Rica* (2012), regarding the examination of the prohibition of in vitro fertilization, the IACHR indicated that it had a disproportionate impact on infertile couples who did not have the economic resources to acquire IVF abroad; that is, several of the victims did not have the economic resources to successfully seek IVF treatment abroad,[54] which constituted indirect discrimination.[55]

[50] IACHR. *Furlan et al. v. Argentina*. Preliminary Objections, Background, Reparations and Costs, August 31, 2012, C246, para. 243.
[51] IACHR. *Uzcátegui et al. v. Venezuela*. Background and Reparations, September 3, 2012, C249, para. 204.
[52] IACHR. *Masacre de Santo Domingo v. Colombia*. Preliminary Objections, Background and Reparations, November 30, 2012, C259, para. 273.
[53] IACHR. *Masacre de Santo Domingo v. Colombia*. Preliminary Objections, Background and Reparations, November 30, 2012, C259, para. 274.
[54] IACHR. *Artavia Murillo et al. ("In Vitro Fertilization") v. Costa Rica*. Preliminary Objections, Background, Reparations and Costs, November 28, 2012, C 257, para. 303.
[55] IACHR. *Artavia Murillo et al. ("In Vitro Fertilization") v. Costa Rica.* Preliminary Objections, Background, Reparations and Costs, November 28,2012, C 257, paras. 288 to 302.

41. In *Yean and Bosico* (2005) and *Expelled Dominicans and Haitians* (2014), both cases against the Dominican Republic, it was proven that many Haitian people in the Dominican Republic suffered in conditions of poverty and marginality due to their legal status and their lack of opportunities.[56]

42. In *Gonzales Lluy et al. v. Ecuado*r (2015), regarding the health of the victim, the IACHR noted that in the Protocol of San Salvador, among the measures for guaranteeing the right to health, the States must promote complete immunization against common infectious diseases as well as provide prevention and treatment for endemic, professional and other diseases, and satisfy the health needs of groups at highest risk and whose conditions of poverty make them most vulnerable.[57]

43. In that case, the IACHR observed that there was an intersectional confluence of multiple factors of vulnerability and risk of discrimination associated with the condition of being a girl, a woman, a poor person and a person with HIV. The IACHR noted that poverty had an impact on initial access to health care of poor quality and which in fact generated exposure to HIV. The situation of poverty had an impact also on the difficulty in locating better access to an educational system and decent housing. Subsequently, being a girl with HIV, the obstructions she suffered in access to education had a negative impact on her overall development, which also had a differential impact taking into account the role of education in overcoming gender stereotypes. To summarize, in the IACHR's view, the victim's case illustrated how stigmatization related to HIV does not have a homogenous impact on all people and has in fact a more serious impact on groups that are marginalized.[58] With the above in mind, the IACHR concluded that the victim suffered discrimination derived from her condition as a person with HIV, being a girl and then a woman living in poverty.[59]

44. As we can see, economic status (poverty or economic condition) in Inter-American jurisprudence has been characterized in three different ways: first of all, poverty or economic condition associated with groups traditionally identified as marginalized (children, women, indigenous populations, people with disabilities, migrants, etc.); secondly, poverty or economic condition examined as multiple/composite discrimination[60] or discrimination intersecting with other categories;[61] and, thirdly, poverty or economic condition examined in an isolated way given the circumstances of the case without linking it to another category of special protection.[62] However, in no case had this third example been examined to include poverty as forming part of economic status, according to the wording of Article 1(1) of the American

56 IACHR. *Las niñas Yean y Bosico v. República Dominicana*. September 8, 2005, C130, para. 139, and *Personas dominicanas y haitianas expulsadas v. República Dominicana*. Preliminary Objections, Background, Reparations and Costs, August 28, 2014, C282, para. 158.
57 IACHR. *Gonzales Lluy et al. v. Ecuador*. Preliminary Objections, Background, Reparations and Costs, September 1, 2015, C298, para. 193.
58 IACHR. *Gonzales Lluy et al. v. Ecuador*. Preliminary Objections, Background, Reparations and Costs, September 1, 2015, C298, para. 290.
59 IACHR. *Gonzales Lluy et al. v. Ecuador*. Preliminary Objections, Background, Reparations and Costs, September 1, 2015, C298, para. 291.
60 IACHR. *Artavia Murillo et al. ("In Vitro Fertilization") v. Costa Rica*. Preliminary Objections, Background, Reparations and Costs, November 28, 2012, C257.
61 IACHR. *Gonzales Lluy et al. v. Ecuador*. Preliminary Objections, Background, Reparations and Costs, September 1, 2015, C298.
62 IACHR. *Uzcátegui et al. v. Venezuela*. Background and Reparations, September 3, 2012, C249.

Convention, the first case being *Laborers at Hacienda Brasil Verde*, which is the reason for this separate opinion.

III. POVERTY AS PART OF "ECONOMIC STATUS" AS CONTEMPLATED IN THE AMERICAN CONVENTION IN THE PRESENT CASE

45. While regional human rights tribunals have not ruled on discrimination based on economic status arising from the poverty suffered by people in their jurisdictions—a factor which may be due to the fact that, in contrast to the American Convention, the European Convention and African Charter do not explicitly contain a prohibition of discrimination due to "economic status"—what is certain is that the IACHR, as evidence attests, is moving in the same direction as the Universal System of recognizing that people who live in conditions of poverty are people who are protected by Article 1(1) of the American Convention because of their economic status. The Inter-American Tribunal adds another way of understanding poverty, as part of the category of special protection.

46. The IACHR recognized for the first time in this Judgment that the discriminatory facts of the present case were derived from the economic status—due to their situation of poverty—of the 85 victims found at Hacienda Brasil Verde. For that reason the ruling established the following:

> 339. The Court confirms in this case some specific characteristics of victimization shared among the 85 workers rescued on March 15, 2000: **(i) they were found to be living in poverty; (ii) they came from the poorest regions of the country, (iii) with the least human development and job prospects; (iv) they were illiterate and (v) had little to no formal education** […], all of which put them in a situation which made them more susceptible to being recruited through false promises and deception. **Said situation of real risk for a specific group of people with identical characteristics and from the same parts of the country has historical origins and has been acknowledged, at least since 1995**, when the Brazilian government expressly recognized the existence of "slave labor" in the country[...].
>
> 341. Having confirmed the situation outlined above, the Court observes that the State did not consider the vulnerability of the 85 workers rescued on March 15, 2000, **by virtue of the discrimination they suffered because of the economic situation to which they were subjected**. The above constitutes a violation of Article 6(1) of the American Convention, in relation to Article 1(1) of the same instrument, to the detriment of the workers.[63] (Emphasis added).

47. The specific criteria for which discrimination is prohibited, according to Article 1(1) of the American Convention, are not an exhaustive list, nor are they literal or limited, but rather illustrative.[64] In contrast to other cases where the IACHR has broadened the catalog of categories of special protection as set out in

[63] IACHR. *Laborers at Hacienda Brasil Verde v. Brazil*. Preliminary Objections, Background, Reparations and Costs, October 20, 2016, C318, paras. 339 and 341.

[64] For example, the IACHR has stated that the wording of Art. 1(1) leaves the criteria open to the inclusion of the term "other social condition" in order to incorporate, other categories that have not been explicitly spelled out. The expression "any other social condition" in Art 1(1) of the Convention must be interpreted by the Court, consequently, from the perspective of the most favorable option for the individual and of the evolution of fundamental rights in modern international law. Cf. *Atala Riffo et al. v. Chile*. Background, Reparations and Costs, February 24, 2012, C239, para. 85.

Article 1(1) of the American Convention,[65] incorporating, for example, gender identity or sexual orientation,[66] or disability;[67] the IACHR's judgment delineates the scope and the content of the prohibition of discrimination due to "economic status" through an examination of the circumstances of poverty in which the 85 victims in the present case were found to be suffering.

48. In that regard, the UN Special Rapporteur on Extreme Poverty and Human Rights has articulated that:

> "18. Discrimination is prohibited on a number of enumerated grounds, including economic and social status as implied in the phrase 'other status,' which is included as a ground of discrimination in the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. Penalty measures target individuals because their income, appearance, speech, address or needs identify them as poor. Thus, such measures clearly constitute discrimination on the basis of economic and social status."[68]

She also added that:

> "In its jurisprudence, the Human Rights Committee has reiterated that the grounds for discrimination are not exhaustive and that "other status" has an open-ended meaning. On the other hand, economic status and social condition are explicitly included as grounds of discrimination in Article 1 of the American Convention on Human Rights. Other prohibited grounds for discrimination such as "property" and even "social origin" may also be relevant in addressing issues of poverty."[69] (Emphasis added).

49. The IACHR, as the Judgment attests, has ruled in such a way as to establish that every person found to be in a situation of vulnerability is entitled to special protection, because of the special duties it is the State's responsibility to fulfill as part of its general obligations to respect and guarantee human rights. The IACHR observed that it is not enough for the States to abstain from violating rights; it is also imperative that they adopt positive measures toward meeting the specific obligation to protect people entitled to

65 Previously, the Court has broadened the catalog of categories of special protection found expressed in Art. 1(1) of the 1969 Convention. In Consulting Opinion No. 18, concerning the legal condition and rights of undocumented migrants, from 2003, in addition to "race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth or other social condition," it also considered "gender, age, patrimony and civil status" as categories–not explicitly—of special protection in light of Art. 1(1) of the Convention. *Cf.* Legal condition of the rights of undocumented migrants. Consulting Opinion 18/03, September 17, 2003, A18, para. 101.

66 In *Atala Riffo et al. v. Chile*, after the "other social condition" clause, the IACHR, taking into consideration the general obligations regarding established guarantees in Art. 1(1) of the Convention, the criteria for interpretation fixed in Art. 29 of the Convention, what is stipulated in the Vienna Convention on Law of Treaties, Resolutions of the UN General Assembly, standards established by the European Court and UN Bodies, the IACHR firmly established that people's sexual orientation and gender identity are categories protected by the Convention. IACHR. *Atala Riffo et al. v. Chile*. Background, Reparations and Costs, February 24, 2012, C239, para. 91.

67 In *Ximenes Lopes v. Brazil*; *Furlan et al. v. Argentina*, and *Artavia Murillo et al. ("In Vitro Fertilization") v. Costa Rica*, without making explicit mention of the clause "other social status," considered that people with disabilities are people who within the provisions of the Convention deserve special protection due to their condition of vulnerability. IACHR. *Artavia Murillo et al. ("In Vitro Fertilization") v. Costa Rica*. Preliminary Objections, Background, Reparations and Costs, November 28, 2012, C257, paras. 292 and 285; *Furlan et al. v. Argentina*. Preliminary Objections, Background, Reparations and Costs, August 31,2012, C246, para. 134, and *Ximenes Lopes v. Brazil*. July 4, 2006, C149, para. 103.

68 UN *Special Rapporteur Report on Extreme Poverty and Human Rights*, Magdalena Sepúlveda Carmona, August 4, 2011, A/66/265, para. 18.

69 UN *Special Rapporteur Report on Extreme Poverty and Human Rights*, Magdalena Sepúlveda Carmona, August 4, 2011, A/66/265, footnote 7.

those rights, whether because of their personal situation or the specific conditions of their lives,[70] such as extreme poverty or marginalization.[71]

50. Therefore poverty forms part of the content of the prohibition of discrimination due to the economic status of a person or group of people. Furthermore, poverty, because of its multidimensional nature,[72] can be approached through different categories of protection in light of Article 1(1) of the American Convention, including economic status, social origin or even through another social condition,[73] and the protection of these categories of protection can also manifest in ways separate, multidimensional or intersectional, depending on the concrete case.[74]

51. Regarding the facts of the present case, the IACHR arrived at this conclusion because people living in poverty are more prone to suffer human trafficking,[75] as happened in the case of the 85 workers at Hacienda Brasil Verde. As for the link to work, poverty and new forms of slavery, the UN's Guiding Principles on Extreme Poverty and Human Rights indicate that:

> 83. In rural and urban areas alike, persons living in poverty experience unemployment, underemployment, unreliable casual labor, with low wages and unsafe and degrading work conditions. These people tend to work outside the formal economy and without social security

[70] IACHR. *Artavia Murillo et al. ("In Vitro Fertilization") v. Costa Rica*. Preliminary Objections, Background, Reparations and Costs, November 28, 2012, C257, paras. 292 and 285; *Furlan et al. v. Argentina*. Preliminary Objections, Background, Reparations and Costs, August 31, 2012, C246, para. 134; *Pueblo Indígena Kichwa de Sarayaku v. Ecuador.* Background and reparations, June 27,2012, C245, para. 244; *Ximenes Lopes v. Brazil*. July 4, 2006, C149, para. 103, and *"Masacre de Mapiripán" v. Colombia*. September 15, 2005, C134, paras. 111 and 113.

[71] IACHR. *Comunidad Indígena Sawhoyamaxa v. Paraguay*. Background, Reparations and Costs, March 29, 2006, C146, para. 154. In a similar vein the Court has also stated that "the States must take into account that groups of people living in adverse circumstances and with fewer resources, such as people who live in conditions of extreme poverty; children and adolescents in dangerous situations, as well as indigenous populations, face an increased risk of suffering mental disabilities [...]. There is a direct and significant link between disability, on the one hand, and poverty and social exclusion on the other. Therefore, among the positive measures the States must implement are the ones necessary for preventing all forms of preventable disability, in addition to giving people who suffer mental disabilities the treatment which is preferred and appropriate to their condition".. *Ximenes Lopes v. Brazil*. July 4, 2006, C149, para. 104. In *Xákmok Kásek* the Court observed that "extreme poverty and the lack of adequate medical attention for pregnant and postpartum women are causes of high maternal mortality and morbidity." *Comunidad Indígena Xákmok Kásek v. Paraguay*. Background, Reparations and Costs, August 24, 2010, C214, para. 233.

[72] Concerning the multidimensionality of poverty, see: UN *Report presented by the independent expert on the question of human rights and extreme poverty*, Arjun Sengupta, A/HRC/5/3, May 31, 2007, paras. 6-11.

[73] In a similar vein, the UN Committee on Economic, Social and Cultural Rights, in its General Comment No. 20, stated that the inclusion of "other social status" indicates that this list is not exhaustive and that other motives can be included [not explicitly] in this category. It has expressed that the character of discrimination varies according to context and evolves over time. Therefore, discrimination based on "other social status" demands a flexible approach that includes other forms of differential treatment which: i) cannot be justified in a reasonable and objective way, and ii) have a nature compatible with expressly recognized grounds. These additional grounds are commonly recognized when they reflect the experience of vulnerable social groups that have suffered and continue to suffer marginalization. In this way, the Committee on Economic, Social and Cultural Rights has expressed that other possible grounds for a prohibition of discrimination could be a result or an intersection of two or more prohibited reasons for discrimination, whether explicit or not. Cf. UN Committee on Economic, Social and Cultural Rights, General Comment No. 20, *Non-discrimination in economic, social and cultural rights (Art. 2 para. 2 of the International Covenant on Economic, Social and Cultural Rights)*, July 2, 2009, E/C.12/GC/20, paras. 15 and 27.

[74] UN *Report Presented by Independent Expert on the Question of Human Rights and Extreme Poverty*, Arjun Sengupta, A/HRC/5/3, May 31, 2007, para. 9.

[75] UN Report by Joy Ngozi Ezeilo, Special Rapporteur on the trafficking of persons, especially women and children, August 6, 2014, A/69/269, paras. 12 and 17; UN Report of the Special Rapporteur on the trafficking of persons, especially women and children, Joy Ngozi Ezeilo, April 1,2014, A/HRC/26/37, para. 41, and UN Action of the Special Rapporteur on the trafficking of persons, especially women and children, July 17, 2014 A/HRC/RES/26/8.

> benefits, such as maternity leave, sick leave, pensions and disability benefits. They may spend most of their waking hours at the workplace, barely surviving on their earnings and facing exploitation including bonded or forced labor, arbitrary dismissal and abuse.[76] (Emphasis added.).

52. In this vein, the Special Rapporteur on contemporary forms of slavery, including its causes and consequences has expressed that:

> 48. Bonded laborers are almost always from socially excluded groups, including indigenous people, minorities and migrants, who suffer additionally from discrimination and political disenfranchisement.[77]

also:

> 38. In many countries in which slavery occurs, victims are poor, have few political connections and have little power to voice their grievances. These communities are normally marginalized and discriminated against as a result of their caste, race, gender and/or their origin as migrants or indigenous populations.[78]

53. If victims of slavery and its analogous forms are *generally, normally or almost always* poor people who have been historically discriminated against due to their race, sex and/or origin as indigenous migrants, that does not exclude there being people who do not fall into these explicit categories, but who are still poor, marginalized or excluded. Nevertheless it is worth emphasizing that when, in addition to being poor, victims fall into other protected categories such as race, gender, ethnic origin, etc., as provided for in Article 1(1), they are in a situation of multidimensional or intersectional discrimination, according to the particularities of the case[79] and has been recognized on other occasions by the Inter-American Court.[80]

54. For the purposes of anti-discrimination law, economic status alludes to structural situations, which, due to various circumstances, deny to one sector of the population access to the general necessities of a decent, autonomous life. It must be understood, therefore, within the context of conditions that prevent a person from having a decent life, such as access to and enjoyment of the most basic social services. In this sense, decent conditions refer to the possibility, for example, of having work and enjoying benefits such as housing, education, health, recreation, public services, social security, culture, given that people's

[76] UN's Guiding Principles on Extreme Poverty and Human Rights, approved by the Council on Human Rights, September 27, 2012, Resolution 21/11, principle 83.
[77] UN Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, *Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development*, A/HRC/12/21, July 10, 2009, para. 48.
[78] UN Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, *Thematic Report on Challenges and Lessons in Combatting Contemporary Forms of Slavery*, July 1, 2013, A/HRC/24/43, para. 38.
[79] IACHR. *Gonzales Lluy et al. v. Ecuador*. Preliminary Objections, Background, Reparations and Costs, September 1, 2015, C298, para. 290.
[80] IACHR. *Artavia Murillo et al. ("In Vitro Fertilization") v. Costa Rica*. Preliminary Objections, Background, Reparations and Costs, November 28, 2012, C 257, and *Gonzales Lluy et al. v. Ecuador*. Preliminary Objections, Background, Reparations and Costs, September 1, 2015, C298.

immediate situations shape their socio-economic condition.[81] The above is more evident in Latin America with respect to women, due to their lack of economic autonomy and the fact that women suffer higher poverty rates than men, which demands State action to adopt specific solutions for this gender inequality and the impact it has on poverty.[82]

55. To summarize, the Inter-American Tribunal has been broadening and defining the categories of people or groups that cannot be discriminated against, which in some cases has been a response to the social realities that develop with the evolution of those categories, and which are not necessarily individually linked but rather respond to diverse factors and social and cultural barriers as a whole, as was the case for HIV being a cause of disability, infertility as a form of disability that has other repercussions, or the situation of disenfranchisement that a migrant worker suffers and, now, the condition of poverty as a part of economic status.

IV. STRUCTURAL VIOLATIONS IN INTERNATIONAL LAW

56. This separate opinion's purpose is to outline recent developments in law pertaining to structural discrimination. It is vitally important for States to consider the existence of these systematic situations of discrimination. Not all human rights violations occur as isolated events; sometimes they happen in response to specific and institutional contexts where human rights are denied.

57. If the current state of International and Constitutional Human Rights Law does not have a deep-rooted vision of this phenomenon, that does not imply that, bit by bit, various institutions have ruled on the existence and reality of this situation. In the following paragraphs we find some converging ideas in the international arena.

i) European Court of Human Rights

58. The European Tribunal, to date, has not recognized the concept of "structural discrimination" by categories of special protection, which could be protected in Article 14 of the European Convention, or through Article 1 of Protocol 12 of that Convention; however, that has not been an impediment to protection from structural and systemic violations of rights provided for in the European Convention. In this regard, it is worth pointing out that whereas the American Convention contains a conventional mandate to adjust and adopt domestic legal measures (Article 2), the European Convention does not contain a provision of similar breadth and dimension.

59. The method that the ECHR has considered best for confronting human rights violations in structural situations is the adoption of measures that help to reverse unfavorable conditions affecting a sector of the population. The absence of a conventional mandate in the ECHR has not been an obstacle to the

[81] Maurino, Gustavo, "Poverty and discrimination: constitutional protections for the least fortunate," in Alegre, Marcelo and Gargarella, Roberto (eds.), *The Right to Equality. Perspectives on Egalitarian Constitutionalism*, 2d ed., Buenos Aires, Abeledo Perrot-Igualitaria-ACIJ, 2012, pp. 265-95, esp. 284.
[82] UN Economic Commission for Latin America and the Caribbean, *Latin American Social Panorama*, 2015, (LC/G.2691-P), Santiago, 2016, pp. 20 and 21.

Strasbourg Tribunal's jurisprudential practice of recognizing the existence of *structural and systemic problems* in relation to other rights protected by the ECHR and, as thus, it orders the implementation of positive measures to guarantee rights protected in the European Convention.[83]

60. The recognition of structural and systemic problems in European jurisprudence has happened through the so-called *pilot judgments*.[84] These pilot judgments are ones the European Tribunal has adopted against the implicated State, derived from the accumulation of different cases with similar characteristics, obligating them to adopt domestic laws (general measures) to correct a structural problem which led to a violation of the European Convention. In this type of case, the ECHR confirms the existence of a systemic problem suspends the proceedings of identical cases (domino effect) and demands that the State adopt general measures. The claimant in the pilot case and all the individuals affected by the structural problem will see the postponement of their proceedings until the State adopts these ordered measures.[85]

61. The leading case in which the ECHR used a pilot judgment was *Broniowski v. Poland*, in 2004, regarding property rights (violation of ECHR Article 1 of Protocol 1). On this occasion the European Court observed, in its analysis of Article 46, that it was inherent to the Court's conclusions that the violation of property rights in this case had originated in a generalized problem, and was the result of a dysfunction of Polish law and administrative practice that had affected a great number of people. The property rights violations in this case were not the result of an isolated event, but instead had been a consequence of administrative and policy behavior on the part of the authorities toward a specific class of citizens (the citizens trying to reclaim their property were from neighborhoods near the Bug River). The ECHR observed that the existence and systemic nature of the problem, which had already been recognized by Polish legal authorities as an "unacceptable systemic dysfunction," meant that an entire specific class of citizens was denied the peaceful enjoyment of their possessions, and it led to a summation of the deficiencies in national legislation and characteristics identified in individual cases.[86]

62. The pilot judgments, as a mechanism for correcting and recognizing structural and systemic problems within the States Parties to the European Convention, were implemented in 2004 and have continued until 2016;[87] encompassing themes such as: i) excessive delays in domestic proceedings; ii) denying the right

[83] ECHR. *Broniowski v. Poland*, No. 31443/96, June 22, 2004, paras. 190 and 191.
[84] The ECHR has used Article 46(1) as its legal basis, in which the States promise to carry out the rulings of the Tribunal in the litigations involving them. Article 1 also establishes the general obligation of the States to respect human rights and Article 19 stipulates that the function of the Tribunal is to ensure that the States respect the commitments that emerge from the ECHR.
[85] The ECHR has considered these pilot judgments to be based on the existence of a generalized and systematic problem whose consequence is that a group of people are adversely affected. Through the determined general measures at the national level, the idea is to take into account all the affected people and remedy the systemic defect that is the basis of the violation declared by the Court. In this way, the pilot rulings are a judicial tool the ECHR uses to remedy systemic and structural problems in domestic legal order. TEDH. *Broniowski v. Poland*, No. 31443/96, September 28, 2005, paras. 34 and 35.
[86] ECHR. *Broniowski v. Poland*, No. 31443/96, June 22, 2004, para. 189.
[87] See, among others, 1. Broniowski v. Poland, No. 31443/96, June 22, 2004; 2. *Hutten-Czapska v. Poland*, No. 35014/97, June 19,2006; 3. *Sejdovic v. Italy*, No. 56581/00, November 10, 2004; 4. *Burdov (No. 2) v. Russia*, No. 33509/04, January 15, 2009; 5. *Suljagic v. Bosnia and Herzegovina*, No. 27912/02, November 3, 2009; 6. *Olaru et al. v. Moldavia*, No. 476/07, 22539/05, 17911/08 and 13136/07, July 28,2009; 7. *Yurig Nikolayevich Ivanov v. Ukraine,* No. 40450/04, October 15, 2009; 8. *Rumpf v. Germany*, No. 46344/06, September 2, 2010; 9. *Athanasiou et al. v. Greece*, No. 50973/08, December 21, 2010; 10. *Greens and M.T. v. United Kingdom*, No. 60041/08 and 60054/08, November 23, 2010; 11. *Maria Atanasiu et al. v. Romania*, No. 30767/05

to vote to incarcerated people; iii) failure to regularize the resident status of people who had been illegally eliminated from the list of permanent residents; iv) inhumane and degrading detention conditions; v) unjustified delays in reaching legal resolutions at the domestic level, and vi) violations related to property rights.

ii) Universal System of Human Rights

63. The UN Committee on Economic, Social and Cultural Rights declared in its General Comment No. 20, *Non-discrimination in Economic, Social and Cultural Rights* (2009):

> 40. National legislation, strategies, policies and plans should provide for mechanisms and institutions that effectively address the individual and structural nature of the harm caused by discrimination in the field of economic, social and cultural rights [...].[88]

64. The UN Committee on the Elimination of Violence against Women in its General Recommendation No. 28 (2010), regarding the core obligations of States parties, stated:

> 16. States-parties are under an obligation to respect, protect and fulfill the right to non-discrimination of women and to ensure the development and advancement of women in order that they improve their position and implement their right of de jure and de facto or substantive equality with men. States-parties shall ensure that there is neither direct nor indirect discrimination against women. Direct discrimination against women constitutes different treatment explicitly based on grounds of sex and gender differences. Indirect discrimination against women occurs when a law, policy, program or practice appears to be neutral insofar as it relates to men and women, but has a discriminatory effect in practice on women because pre-existing inequalities are not addressed by the apparently neutral measure. Moreover, indirect discrimination can exacerbate existing inequalities owing to a failure to recognize structural and historical patterns of discrimination and unequal power relationships between women and men.[89]

and 33800/06, October 12, 2010; 12. *Vassilios Athanasiou v. Greece*, No. 50973/08, December 21, 2010; 13. *Dimitrov and Hamanov v. Bulgaria*, No. 48059/06, May 10,2011; 14. *Finger v. Bulgaria*, No. 37346/05, May 10, 2011; 15. *Ümmühan Kaplan v. Turkey*, No. 24240/07, March 20, 2012; 16. *Michelioudakis v. Greece*, No. 40150/09, April 3, 2012; 17. *Glykantzi v. Greece*, No. 40150/09, October 30, 2012; 18. *Kurić et al. v. Slovenia*, No. 26828/06, June 26, 2012; 19. *Ananyev et al. v. Russia*, No. 42525/07 and 60800/08, January 10, 2012; 20. *Manushaqe Puto et al. v. Albania*, No. 604/07, 43628/07, 46684/07 and 34770/09; July 31, 2012; 21. *Torreggiani et al. v. Italy*, No. 43517/09, January 8, 2013; 22. *M.C. et al. v. Italy*, No. 5376/11, September 3, 2013; 23. *Gerasimov et al. v. Russia*, No. 29920/05, 3553/06, 18876/10, 61186/10, 21176/11, 36112/11, 36426/11, 40841/11, 45381/11, 55929/11 and 60822/11, July 2014; 24. *Ališić et al. v. Bosnia and Herzegovina, Croatia, "the former Yugoslav Republic of Macedonia", Serbia and Slovenia,* No. 60642/08, July 16, 2014; 25. *Gazsó v. Hungary*, No. 48322/12, July16, 2015; 26. *Neshkov et al. v. Bulgaria*, No. 36925/10, 21487/12, 72893/12, 73196/12, 77718/12 and 9717/13, January 27, 2015; 27. *Varga et al. v. Hungary*, No. 14097/12, 45135/12, 73712/12, 34001/13, 44055/13 and 64586/13, March 10, 2015; and 28. *W.D. v. Belgium*, No. 73548/13, September 6, 2016.

88 *Cf*. UN Committee on Economic, Social and Cultural Rights, General Comment No. 20, *Non-Discrimination in Economic, Social and Cultural Rights*, July 2, 2009, E/C.12/GC/20, para. 40.

89 UN Committee on the Elimination of Discrimination against Women, *General Recommendation No. 28 On the Core Obligations of States Parties Under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women,* December 16, 2010, CEDAW/C/GC/28, para. 16. As for structural discrimination that women suffer, the Special Rapporteur has expressed that: 17. The discrimination and violence that is reflected in gender-related killings of women can be understood as multiple concentric circles, each intersecting with the other. These circles include structural, institutional, interpersonal and individual factors. The structural factors include macro-level social, economic and political systems; institutional factors include formal and informal social networks and institutions; interpersonal factors include personal

65. The UN Committee on the Elimination of Racial Discrimination, stated in its General Recommendation No. 34, concerning *Racial Discrimination against People of African Descent* (2011):

> 6. Racism and structural discrimination against people of African descent, rooted in the infamous regime of slavery, are evident in the situations of inequality affecting them and reflected, inter alia, in the following domains: their grouping, together with indigenous peoples, among the poorest of the poor; their low rate of participation and representation in political and institutional decision-making processes; additional difficulties they face in access to and completion and quality of education, which results in the transmission of poverty from generation to generation; inequality in access to the labor market; limited social recognition and valuation of their ethnic and cultural diversity; and a disproportionate presence in prison populations.[90] (Emphasis added.).

66. The most complete definition of structural or systemic discrimination has been the one recently put forward by the UN Committee of the Rights of Persons with Disabilities, in its General Comment No. 3, on the rights of women and girls with disabilities. Here, this Committee understands that structural or systemic discrimination exists when:

> 17. e) Structural, or systemic, discrimination is reflected in hidden or overt patterns of discriminatory institutional behavior, discriminatory cultural traditions and discriminatory social norms and/or rules. Harmful gender and disability stereotyping, which can lead to such discrimination, is inextricably linked to a lack of policies, regulations and services specifically for women with disabilities.[91]

67. Concerning the existence of structural poverty, the UN Special Rapporteur on the right to food, examining conditional social assistance programs, available to those who meet certain eligibility requirements, observed that:

> 30. Conditional programs are generally designed to address long-term, structural poverty rather than the disturbance of income, particularly if those disturbances are expected to be short-term ones; they are not the ideal instrument for dealing with transient poverty.[92]

68. If there is not to date an explicit International Law definition of structural poverty[93] as a form of discrimination, there are pronouncements from the Special Rapporteurs on Extreme Poverty that provide

relationships between partners, among family members and within the community; and individual factors include personality and individual capacities to respond to violence. *Report of the Special Rapporteur on Violence against Women, its Causes and Consequences*, Rashida Manjoo, May 23, 2012, A/HRC/20/16.

90 UN Committee on the Elimination of Racial Discrimination, General Recommendation No. 34, *C*oncerning Racial Discrimination against *P*eople of African *D*escent (2011), October 3, 2011, CERD/C/GC/34, para. 6.

91 UN Committee on the Rights of Persons with Disabilities, *General Comment No. 3 on the Rights of Women and Girls with Disabilities*, September 2, 2016, CRPD/C/GC/3, para. 17.e.

92 UN Report of the Special Rapporteur on the Right to Food, Oliver de Schutter, *Crisis into Opportunity: Reinforcing Multilateralism*, July 21, 2009, A/HCR/12/31, para. 30.

93 In this sense Roberto Saba indicates that it is necessary to emphasize that the situation of structural poverty often coexists, although not necessarily, with other identity or personality traits that are also characteristic of subjected or subjugated groups, such as ethnicity or gender, and that combined with structural poverty reinforce the subjected or subjugated nature of the group. He also indicates that the configuration and consequent identification of this group of people is not an easy task. He proposes however, in an illustrative rather than limiting way, that there are three concrete situations which could indicate the existence of a subjected group, characterized by sharing structural poverty: i) geographic concentration of a group of people in spaces where

a way to determine who in particular could be affected by this situation. For example, the UN's Guiding Principles on Extreme Poverty and Human Rights have indicated that extreme poverty is a situation created, promoted and perpetuated by actions and omissions of the States and other agents. By neglecting people living in extreme poverty, past public policies have perpetuated poverty from one generation to the next. Structural and systemic inequalities, as well as inequalities in the social, political economic and cultural orders, which often go unaddressed, make poverty more profound.[94]

69. Furthermore, the right of people living in poverty to participate fully in society and decision-making encounters many economic, social, structural, legal and systemic obstacles that aggravate the situation.[95] On the other hand, even when there are participatory mechanisms in place, people who live in poverty have serious difficulties in using them or exercising their influence through them due to a lack of information, little education or illiteracy.[96] Many jurisdictions, in an effort to respond to these situations of structural discrimination, rulings only affect the parties to the litigation or those who made a claim in the litigation, even when the causes have broader repercussions. This means that only the people who have the capacity or tenacity to overcome all the barriers to access to justice will be able to benefit from important rulings.

70. However, those who live in poverty tend to suffer the consequences of extended practices or wide-ranging governmental measures that create situations in which the rights of many people are at stake; therefore, in legal systems where courts can exercise jurisdictional control or issue *erga omnes* rulings, and have the capacity to declare certain laws or situations unconstitutional, this can have a positive effect when guaranteeing justice to people living in poverty.[97]

71. People who suffer from structural poverty are people who, in general, have historically passed on their situation to the next generation, whose possibilities of political participation keep decreasing and who also are denied rights to basic services. In the face of the foregoing, access to justice will depend on their having the capacity to overcome their own conditions of poverty, independently of whether or not they also belong to historically marginalized or excluded groups.

only other equally poor people live; ii) the second, related to the first, is the difficulty or impossibility of accessing basic public services necessary to the development of a decent and modest life, with security, education and health; and iii) the third is the intergenerational transmission and perpetuation of situations such as those that arise through the previous two cases, which is to say, descendants who cannot get away from the birthplace and who suffer the same deprivations that would prevent them from escaping from a situation vital to determining their status from birth. *Cf.* Saba, Roberto, *Poverty, Human Rights and Structural Inequality*, Mexico, National Supreme Court of Justice-Electoral Tribunal Electoral of Judicial Power of the Federation-Electoral Institute of the Federal District, 2012, p. 46.

94 UN Guiding Principles on Extreme Poverty and Human Rights, approved by the Council on Human Rights, September 27, 2012, Resolution 21/11, Principle 5.

95 UN Report of the Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona, March 11, 2013, A/HRC/23/36, para. 13.

96 UN Report of the Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona, March 11, 2013, A/HRC/23/36, para. 43.

97 UN Report of the Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona, *Extreme Poverty and Human Rights*, August 9, 2012, A/67/278, paras. 83 and 84.

V. STRUCTURAL, INDIRECT AND DE FACTO DISCRIMINATION IN INTER-AMERICAN COURT JURISPRUDENCE

72. A great deal of the IACHR's jurisprudence has dealt with and made more visible the direct discrimination that certain groups suffer within societies. However, that has not prevented this Court from making rulings, in isolated cases and in certain contexts, which establish that structural, indirect and de facto discrimination must also be taken into account.

73. In 2009, *González et al. ("Campo Algodonero") v. México*, referred to structural discrimination in the reparations section of the Ruling:

> 450 [...]. However, taking into account the situation of structural discrimination in which the facts of the present case occurred and which was recognized by the State [...], the reparations must have the purpose of transforming said situation, in such a way that they have not only a substitutive but also a corrective effect. In this sense, a restitution of the same structural situation of violence and discrimination is not admissible.[98]. (Emphasis added.).

74. In 2010, while referring to *de facto* discrimination, the court, in *Comunidad Indígena Xákmok Kásek v. Paraguay*, considered the following:

> 273. In the present case, it is established that the situation of extreme and special vulnerability of the members of the Community is due, inter alia, to the lack of adequate and effective resources that in fact would protect the rights of the indigenous peoples and not only in a formal way; the weak presence of state institutions obligated to provide goods and services to the Community members, in particular food, water, health and education [...].
>
> 274. [...] shows evidence of a de facto discrimination against members of the Xákmok Kásek Community, marginalized in their enjoyment of rights that the Tribunal declares to be violated in this Ruling. Likewise there is evidence that the State has not adopted necessary positive measures to reverse said exclusion.[99] (Emphasis added.).

75. In *Atala Riffo et al. v. Chile*, in 2012, the Tribunal ruled with respect to structural discrimination that:

> 92. Regarding the State's argument that at the date of the Supreme Court's ruling there would not have existed a consensus with respect to sexual orientation as a prohibited category of discrimination, the Court points out that the alleged lack of consensus within some countries concerning full respect for the rights of sexual minorities cannot be considered a valid argument for denying or restricting human rights or for perpetuating and reproducing the historical and structural discrimination these minorities have suffered [...]. (Emphasis added.).

76. Regarding reparations in this case, the IACHR observed that:

> 267. The Court points out that some discriminatory acts examined in previous sections are related to the reproduction of stereotypes associated with structural and historical discrimination that

98 IACHR. *González et al ("Campo Algodonero") v. México*. Preliminary Objection, Background, Reparations and Costs, November 16, 2009, C205, para. 450.
99 IACHR. *Xákmok Kásek v. Paraguay*. Background, Reparations and Costs, August 24, 2010, C214, paras. 273 and 274.

> sexual minorities have suffered [...], particularly in questions related to the access to justice and application of domestic law. Therefore, some of the reparations must have the purpose of transforming said situation, in such a way that they have not only a substitutive but also a corrective effect toward structural changes meant to disarticulate those stereotypes and practices that perpetuate discrimination against the LGTBI population.[100] (Emphasis added).

77. Lastly, in *Nadege Dorzema et al. v. Dominican Republic*, in 2012, without ruling on structural discrimination, the Court deliberated on indirect and de facto discrimination in the following way:

> 235. The Court deems that a violation of the right to equality and non-discrimination also occurs in situations and cases of indirect discrimination [...].
>
> 237. Therefore, the Court observes that in the present case the situation of special vulnerability of the Haitian migrants is due, inter alia, to: i) the lack of preventive measures to adequately confront the situations related to migratory control of the land border with Haiti and in consideration of their situation of vulnerability; ii) violence carried out through illegitimate and disproportionate use of force against unarmed migrants; iii) lack of investigation into the motive behind said violence, the lack of statements and participation of the victims in the criminal proceedings and the impunity of the facts; iv) the collective detentions and expulsions without due guarantees; v) lack of adequate medical attention and treatment for wounded victims, and vi) the denigrating treatment of the cadavers and failure to deliver them to the next of kin.
>
> 238. All of the above is evidence that in the present case there was de facto discrimination to the detriment of the victims of the case because of their status as migrants, which resulted in a marginalization of their enjoyment of the rights that the Court in this Ruling declares violated. Therefore the Court concludes that the State did not respect or guarantee the rights of the Haitian migrants without discrimination in relation to Articles 2, 4, 5, 7, 8, 22(9) and 25 thereof.[101] (Emphasis added.).

78. In this way, the IACHR has evaluated the impact that indirect discrimination has in contexts of *de facto* discrimination.[102] Indirect discrimination happens when regulations and practices are apparently neutral, but the result of their content or application constitutes a disproportionate impact on people and groups of people in a situation of historical disadvantage simply because of their disadvantage, without there being any objective and reasonable justification, and which materializes in the existence of structural and contextual factors which must be analyzed case–by-case.

79. In these four cases, the IACHR has recognized the existence of structural, indirect or *de facto* factors in the enjoyment and exercise of some rights contemplated in the American Convention. The principle of equality understood as a prohibition of discrimination is a limited conception for some situations

[100] IACHR. *Atala Riffo et al. v. Chile*. Background, Reparations and Costs, February 24, 2012, C239, paras. 92 and 267.
[101] IACHR. *Nadege Dorzema et al. v. Dominican Republic*. Background Reparations and Costs, October 24, 2012, C251, paras. 235, 237 and 238.
[102] IACHR. *Nadege Dorzema et al. v. Dominican Republic*. Background Reparations and Costs, October 24, 2012, C251, paras. 235, 237 and 238; *Atala Riffo et al. v. Chile*. Background, Reparations and Costs, February 24, 2012, C 239, paras. 92 and 267, and *Xákmok Kásek v. Paraguay*. Background, Reparations and Costs, August 24, 2010, C214, paras. 273 and 274. In a similar vein: *González et al. ("Campo Algodonero") v. México*. Preliminary Objection, Background, Reparations and Costs, November 16, 2009, C205, para. 450.

grounded in indirect discrimination based on *de facto* circumstances; it therefore becomes necessary to understand non-discrimination in light of a situation of disadvantage that some groups suffer and for which they can be submitted to historically discriminatory conditions, which on occasion are endorsed by society. The structural and contextual elements produced by indirect or de facto discrimination allow for the Court to determine whether, in light of Article 1(1) of the American Convention, a specific group of people is confronted with a situation of structural discrimination.

80. These are some elements that must be taken into consideration, in an illustrative but not limiting way, in order to determine if the context or collective standards point to a situation of structural discrimination. The aforementioned cases have taken into consideration that they are dealing with: i) a group or groups of people who have immutable or unmodifiable characteristics due to the people's own will or because of historical factors of discriminatory practices, whether this group pertains to a minority or a majority; ii) groups found to be in a systemic and historical situation of exclusion, marginalization or subordination, which prevents their access to basic conditions of human development; iii) a situation of exclusion, marginalization or subordination concentrated in a geographical area or dispersed throughout the entire territory of a State and which in some cases can be inter-generational, and iv) people belonging to these groups, regardless of the intention of the norm, neutrality or explicit mention of any explicit distinction or restriction based on the wording and interpretations of Article 1(1) of the American Convention, who are victims of indirect discrimination or *de facto* discrimination, due to the actions or applications of measures and actions implemented by the State.

VI. THE REACH OF HISTORICAL AND STRUCTURAL DISCRIMINATION IN *LABORERS AT HACIENDA BRASIL VERDE v. BRAZIL*

81. In the present case, the IACHR has taken as a proven fact that the slave trade has historically been linked to forced labor in Brazil.[103] However, despite the abolition of slavery in 1888, poverty and the concentration of land ownership were structural causes that led to the continuation of slave labor in Brazil, and since they did not have their own land or stable work situations, many workers in Brazil were subjected to exploitative situations and accepted the risk of ending up in inhumane and degrading work conditions. In 2010, the ILO believed there to be approximately 25,000 people subjected to forced labor in Brazil.[104] Furthermore, it was a proven fact that the majority of the victims of slave labor in Brazil were workers from the regions and states characterized by the highest poverty rates, with higher rates of illiteracy and rural labor (Maranhão, Piauí, Tocatins). Workers from these states were attracted to ones with higher demand for slave labor: Pará, Mato Grosso and Tocantins.[105] These workers, for the most part

[103] IACHR. *Laborers at Hacienda Brasil Verde v. Brazil*. Preliminary Objections, Background, Reparations and Costs, October 20, 2016, C318, para. 110.
[104] IACHR. *Laborers at Hacienda Brasil Verde v. Brazil*. Preliminary Objections, Background, Reparations and Costs, October 20, 2016, C318, para. 111.
[105] IACHR. *Laborers at Hacienda Brasil Verde v. Brazil*. Preliminary Objections, Background, Reparations and Costs, October 20, 2016, C318, para. 112.

poor men of African descent between the ages of 18 and 40, are recruited in their states of origin by the *gatos* to work in states far away, with the promise of attractive salaries.[106]

82. Regarding the geographic location of the farms, the IACHR observed that location was itself a limiting factor in the freedom of the workers, given that access to urban centers was often impossible, due to the distance as well as the precarious access roads. Furthermore, due to their extreme poverty, their desperate need for work and their situation of vulnerability, they accepted precarious work conditions.[107] Concerning investigations into these facts, and in accordance with the ILO, the impunity regarding submission to slave labor is due to the connections between the landowners with sectors of federal, state and municipal powers in Brazil. Many landowners exercise dominion and influence at various levels of national power, whether directly or indirectly.[108] Hacienda Brasil Verde is in the state of Pará.[109]

83. The Court declared in this Ruling that the workers rescued from Hacienda Brasil Verde were found to be in a situation of debt bondage and subjected to forced labor and that factors existed which made their vulnerability more acute.[110] The Tribunal also observed that, given the facts in the present case and given the specific characteristics to which the 85 workers rescued in 2000 were subjected, the extremes of debt bondage and slavery met and surpassed the strictest elements of the definition of slavery as established by the Court.[111]

84. *Laborers at Hacienda Brasil Verde v. Brazil* is the first time the IACHR has recognized the existence of a *structural and historical discrimination* given the context which caused the human rights violations of the 85 victims. It is also the first case where the IACHR explicitly finds a State to be internationally responsible for perpetuating this structural and historical situation of exclusion. On this topic, the Ruling states that:

> 343. Because of everything aforementioned, the Court rules that the State violated the right not to be subjected to slavery and human trafficking in violation of Article 6(1) of the American Convention on Human Rights, in relation to Articles 1(1), 3, 5, 7, 11 and 22 of the same instrument, to the detriment of the 85 workers rescued on March 15, 2000, at Hacienda Brasil Verde, the names of whom are listed in paragraph 206 of this Ruling. Additionally, regarding Antônio Francisco da Silva, the violation also occurred in relation to Article 19 of the American Convention, because he was a child at the time the facts occurred. Finally, Brazil is responsible for the violation of Article 6(1) of the American Convention, in relation to Article 1(1) of the same

[106] IACHR. *Laborers at Hacienda Brasil Verde v. Brazil*. Preliminary Objections, Background, Reparations and Costs, October 20, 2016, C318, para. 113.
[107] IACHR. *Laborers at Hacienda Brasil Verde v. Brazil*. Preliminary Objections, Background, Reparations and Costs, October 20, 2016, C318, para. 114.
[108] IACHR. *Laborers at Hacienda Brasil Verde v. Brazil*. Preliminary Objections, Background, Reparations and Costs, October 20, 2016, C318, para. 115.
[109] IACHR. *Laborers at Hacienda Brasil Verde v. Brazil*. Preliminary Objections, Background, Reparations and Costs, October 20, 2016, C318, para. 128.
[110] IACHR. *Laborers at Hacienda Brasil Verde v. Brazil*. Preliminary Objections, Background, Reparations and Costs, October 20,2016, C318, para. 303.
[111] IACHR. *Laborers at Hacienda Brasil Verde v. Brazil*. Preliminary Objections, Background, Reparations and Costs, October 20,2016, C318, para. 304.

instrument, produced in the context of a situation of historical and structural discrimination due to the economic status of the 85 workers identified in paragraph 206 of this Ruling.

RESOLUTIONS

4. The State is responsible for the violation of Article 6(1) of the American Convention, in relation to Article 1(1) of the same instrument, produced in the context of a situation of structural and historical discrimination and on the basis of the economic status of the 85 workers identified in paragraph 206 of this Ruling, as explained in paragraphs 342 and 343 of the present Ruling.[112] (Emphasis added).

85. If the problem of the existence of poverty and extreme poverty in the Inter-American region involves all the States that form part of the Inter-American System, for the purposes of examining the present case, it is important to highlight the situation of poverty, which could exist within a framework of structural poverty, that originated in the first instance when the 85 workers became subject to human trafficking and that had as a consequence that the victims were subjected to forced labor and debt bondage. Two fundamental aspects of the present case and that were instrumental in determining discrimination based on a situation of poverty were: i) concentration of the phenomenon of slave labor in a specific geographic area and its historical perpetuation; and ii) the impossibility of the 85 victims obtaining basic conditions of human development during their work.

86. It is important to clarify that in many cases it is probable that there is no direct intentionality to confine members of a group to inferior strata of the social structure, nor to put them in situations of systematic disadvantage; it is probable that it would not even be possible to clearly identify concrete factors that led to the result of systematic disadvantage. What is relevant here is to determine whether there was infringement of the prohibition of discrimination and whether a group of people at Hacienda Brasil Verde were consistently excluded, because of the situation in which they were forced to live, from the chance at autonomous development as individuals.

87. In this context, the 85 victims in the present case had been subjected to human trafficking through capture and recruitment of workers by way of fraud, deceit and false promises from the poorest regions of the country, and that capture had as its goal labor exploitation in Brazil.[113]

88. This case: i) involved a group of people who required special protection due to their being workers who were victims of human trafficking, and given due to their situation of poverty mixed with outright deceit they landed on the threshold of slavery; ii) involved people who were subjected to historical and systematic practices which kept them in a situation of exclusion and marginalization; iii) dealt only with the state of Pará and the Hacienda Brasil Verde, although thousands of other victims who keep being liberated by Brazilian authorities, especially in the southern part of Pará, must be taken into consideration;

112 IACHR. *Laborers at Hacienda Brasil Verde v. Brazil*. Preliminary Objections, Background, Reparations and Costs, October 20, 2016, C318, para. 343 and Resolution 4.
113 IACHR. *Laborers at Hacienda Brasil Verde v. Brazil*. Preliminary Objections, Background, Reparations and Costs, October 20, 2016, C318, para. 305.

and iv) involved 85 victims subjugated to slavery due to indirect and de facto discrimination as a result of inefficient state practices of prevention and eradication. The IACHR concluded that the 85 laborers at Hacienda Brasil Verde were victims of structural and historical discrimination that arose within the Brazilian State due to the phenomenon of slavery according to the terms of the Ruling.[114]

89. The recognition of structural and historical discrimination due to the phenomenon of slave labor is of vital importance, because it was not just any sort of person who was the target of capture by the *gatos*, but rather people who fit a specific profile, and the poverty in which they lived played a crucial factor in their vulnerability. In the Ruling, the IACHR ruled and observed:

> 339. […] in this case *some specific characteristics of victimization shared among the 85 workers rescued* on March 15, 2000: **(i) they were found to be living in poverty; (ii) they came from the poorest regions of the country, (iii) with the least human development and job prospects; (iv)they were illiterate and (v) had little to no formal education** (*supra* para. 41), all of which put them in a situation which made them more susceptible to being recruited through false promises and deception. **Said situation of immediate risk for a specific group of people with identical characteristics and from the same parts of the country has historical origins and has been acknowledged, at least since 1995**, when the Brazilian government expressly recognized the existence of "slave labor" in the country.[115] (Emphasis added.).

90. Regarding structural discrimination for the determination of international responsibility:

> 338. The Court considers that the State incurs international responsibility in those cases where structural discrimination exists, and it adopts no specific measures regarding the specific situation of victimization where vulnerability has been determined to apply to a circle of individuals. Their very victimization demonstrates their vulnerability, which demands its own specific protective action, which was omitted in the case of the workers rescued from Brasil Verde Farm.[116] (Emphasis added.).

91. In other words, the existence of structural discrimination is itself a reproachable situation because it means the States maintain large sectors, or groups of their populations, specifically in a situation of social exclusion. However, in the face of this palpable situation of structural discrimination, as the facts of this case recognize, if a State having knowledge of the existence of this problem within its territory and with

[114] Also regarding structural and historical discrimination it must be taken into consideration that: i) Given the high number of victims of slavery, trafficking and involuntary servitude who keep being liberated by the Brazilian authorities and a changing perspective on these phenomena and their occurrence, "in the last links of the supply chain of a globalized economy", it is important that the State adopt measures for diminishing the demand that drives the exploitation of work, whether through forced labor, involuntary servitude or slavery; ii) In that respect in the concrete case the Court confirmed a series of failures and negligence on the part of the State to prevent the occurrence of debt bondage, human trafficking and slavery within its territory before 2000, but also as of the complaints filed by Antonio Francisco da Silva and Gonçalo Luiz Furtado, and iii) Since 1988 several charges were filed about the existence of situations analogous to slavery in the state of Pará, and specifically at Brasil Verde Farm. Said complaints and charges identified a *modus operandi* of recruitment and exploitation of workers in that particular southern region of Pará. IACHR. *Laborers at Hacienda Brasil Verde v. Brazil*. Preliminary Objections, Background, Reparations and Costs, October 20, 2016, C318, paras. 318, 319, 326 and 327.

[115] IACHR. *Laborers at Hacienda Brasil Verde v. Brazil*. Preliminary Objections, Background, Reparations and Costs, October 20, 2016, C318, para. 339.

[116] IACHR. *Laborers at Hacienda Brasil Verde v. Brazil*. Preliminary Objections, Background, Reparations and Costs, October 20, 2016, C318, para. 338.

respect to a delineated group of people does not take sufficient and effective measures to counteract the concrete situation, it is creating a situation of greater vulnerability for the victims, especially because of the latent knowledge of the risk it presents; a situation, specifically, that could be assessed by the Inter-American Tribunal.

92. The above does not exclude the State's obligation to implement on a domestic level actions of a general character; it is very important to consider the individual and collective nature of the beneficiaries of certain state obligations to guarantee the effectiveness of its laws. The guidelines for responding to an individual situation are known as positive measures of equalization; ones that compensate a collective inequality are known as positive actions of equalization.[117]

93. In this case, the IACHR observed that at the moment of the facts, the general actions for combatting the phenomenon of slave labor—the existence of the problem of slave labor in Brazil was well known—implemented from 1995 to 2000 had not been sufficient and effective; and in addition the IACHR in using the expression "does not adopt specific measures with respect to the particular situation," does it in the sense that, independently of the general actions implemented, when a specific sector or group is identifiable (geographically, for example), the State must implement additional measures to its general actions in order to reverse the situation that requires prioritized action on a structural state level.

94. Independently of the above, this aspect is fundamentally important and relevant, because structural discrimination has a component of historical continuity that perpetuates itself systematically in present-day societies, and which, furthermore, in doctrine and jurisprudence has not been consolidated as a fundamental aspect of the discrimination that some groups who have been excluded and marginalized suffer.

95. What the IACHR is reinforcing, in recognizing the existence of this type of historical discrimination, is that the prohibition of discrimination seeks to avoid the materialization of groups who find themselves to be in submission, excluded or marginalized due to social, economic or political consequences, or public measures. On the other hand, the historical and structural discrimination within which the individuals in this case were living is not linked irrationally or arbitrarily to explicit criteria within the guidelines or direct effects of a concrete case.

96. On the contrary, the inefficiency, inability and deficient application of general actions to prevent discrimination on a State's domestic level can produce and perpetuate, for years, the existence of discrimination for certain disadvantaged groups, such as was the case for the people subjected to slave labor and, given their conditions of poverty, pointed to a special Brazilian vulnerability, in light of Article 6(1) of the American Convention in relation to Article 1(1) of the same instrument.[118]

[117] Giménez Glück, David, The justice of equality and the Constitutional Tribunal, Barcelona, Bosch, 2004, pp. 311-12.
[118] It is worth pointing out that in this case the Court did not rule on *non-repetitive measures* as a means of reparations, taking into consideration that as of 1995 the Brazilian State has redoubled its efforts to avoid the perpetuation of the situation of

VII. CONCLUSIONS

97. As this separate opinion has tried to express, unlike the European and African Systems of Human Rights, the Universal and Inter-American Systems show a tendency to consider that people found to be in a situation of poverty constitute a group in a situation of vulnerability distinct from groups traditionally identified as such; said condition is recognized as a category of special protection and part of the prohibition of discrimination due to "economic status" contemplated explicitly in Article 1(1) of the American Convention.

98. In the present case, the situation of special vulnerability due to the 85 workers' position of poverty meant that they were victims of human trafficking because of the existing *modus operandi* in the state of Pará; and also considering other similar characteristics, made them likely to accept, through deceit, work offers at Hacienda Brasil Verde, which materialized into forms of slave labor. This particular situation is not isolated, but as became clear in the Ruling, it has historical antecedents and had been perpetuated toward specific sectors of the population in delineated geographic areas after 1995, when Brazil explicitly recognized the existence of "slave labor" in the country. The situation of poverty has therefore been understood to be the determining structural factor of the historical perpetuation of slave labor in Brazil.

99. As the Ruling explains, poverty "is the main factor of modern slavery in Brazil, because it heightens the vulnerability of a significant part of the population and makes them easier prey for the recruiters who lure them into slave labor."[119] Poverty, in the *sub judice* case, is not so much a phenomenon as a way of creating special vulnerability where the situation of exclusion and marginalization combined with the structural and systemic denial (with historical antecedents in this particular case) influenced the 85 workers rescued at Hacienda Brasil Verde.

100. It cannot go unremarked by an Inter-American judge that slavery, in its analogous and contemporary forms, originates in poverty, inequity and social exclusion, and has repercussions in democracies throughout the region. Examining the Inter-American experience of human rights protections (civil, political, economic, social, cultural and environmental) demands that peculiarities of the region be considered, given that Latin America is the region with the highest rates of inequality in the world.[120] In

capturing poor people in order to press them into forced labor, an action that the IACHR sees favorably; independently of which, and without discounting the efforts that have been implemented so far, the IACHR urged the State to continue increasing the efficiency of its policies and interaction between the various bodies linked to the combatting of slavery in Brazil, without permitting any regression in the matter. The order of non-regression implies that if no enactment of additional measures are implemented to sufficiently meet the criteria of this Court, the guarantee of non-repetition is not simply exhausted because actions, measures, guidelines and public policies exist; the whole range of these mechanisms must be effective on the ground and have the goal of not allowing the renewed existence of situations of discrimination such as the ones presented in this Ruling. IACHR. *Laborers atHacienda Brasil Verde v. Brazil*. Preliminary Objections, Background, Reparations and Costs, October 26, 2016, C318, para. 470.

119 IACHR. *Laborers at Hacienda Brasil Verde v. Brazil*. Preliminary Objections, Background, Reparations and Costs, October 20, 2016, C318, para 340. ILO-Brazil. *Combatting Contemporary Slave Labor: the Brazil example*, 2010, p. 2010 (evidence file, page 8529).

120 *Cf.* Piovesan, Flávia, "Protection of social rights: challenges of an un ius commune for South America", in Bogdandy, Armin von, Fix Fierro, Héctor, Morales Antoniazzi, Mariela, and Ferrer Mac-Gregor, Eduardo (eds.), *Construction and the role of*

this sense, the States in the region must be consistent with the OAS Social Charter of the Americas (2012)[121] and its Action Plan (2015),[122] in order to seek and to progressively achieve full realization of *social justice* in our continent.

Eduardo Ferrer Mac-Gregor Poisot, Judge Pablo Saavedra Alessandri, Secretary

fundamental social rights: Toward an Ius Constitutionale Commune *in Latin America,* México, UNAM/IIJ-Instituto Iberoamericano de Derecho Constitucional-Max Planck-Institute für ausländisches öffentliches Recht und Völkerrecht, 2011, pp. 339-80, in p. 369.

[121] Social Charter of the Americas, approved by the OAS Assembly June4, 2012, OAS/Ser.P/AG/doc5242/12rev.2, Cochabamba, Bolivia. The Charter's preamble states: "*considering that the Charter of the OAS established among its essential purposes to eradicate extreme poverty [and] reaffirming the determination and commitment of member states to urgently combat the serious problems of poverty, social exclusion, and inequity that affect, in varying degrees, the countries of the Hemisphere; to confront their causes and consequences; and to create more favorable conditions for economic and social development with equity to promote more just societies* [...].

[122] *Action Plan of the Social Charter of the Americas*, approved by the Permanent Council in joint session, February 11, 2015, referendum in the 45th session of the OAS General Assembly, OAS//Ser.G CP/doc.5097/15, Washington D.C., USA.

INDIVIDUAL CONCURRING OPINION OF JUDGE EDUARDO VIO GROSSI, INTER-AMERICAN COURT OF HUMAN RIGHTS
LABORERS AT HACIENDA BRASIL VERDE *v.* BRAZIL, OCTOBER20, 2016 JUDGMENT
(Preliminary Objections, Background, Reparations and Costs)

1. This opinion is being issued along with the main Ruling,[1] with the purpose of reiterating that the reference in Resolution No. 4 of the same to "structural and historical discrimination," does not imply that the State is generally being declared internationally responsible because of it.

2. Given that in the Ruling there was no pronouncement on "structural and historical discrimination" in the State and that, nevertheless, it was confirmed that in "1995 [...] the Brazilian government expressly recognized the existence of 'slave labor' in the country,"[2] subsequently adopting measures to address it;[3] and keeping in mind that "[t]he Court considers the State to incur international responsibility in those cases where structural discrimination exists and it adopts no specific measures regarding the specific situation of victimization where vulnerability has been determined to apply to a circle of individuals,"[4] it is logical to conclude, as the Ruling does, that "Brazil did not show that it had adopted specific measures, with respect to this case and at the time the stated facts occurred, in accordance with the already-known circumstances of the workers in a situation of slavery and of the concrete allegations made against Hacienda Brasil Verde, to prevent the occurrence of the violation of Article 6(1) confirmed in this case."[5]

3. Furthermore, it is worth clarifying that the Ruling indicates that the "economic status" of a person is one of the causing factors of discrimination prohibited in Article 1(1) of the American Convention;[6] that "this case's evidence file warns of the existence of a situation with the hallmarks of discriminatory treatment based on the economic status of the victims rescued on March 15,2000,"[7] and that "poverty, then, is the main factor of modern slavery in Brazil, because it heightens the vulnerability of a significant part of the population, making them easier prey for the recruiters who lure them into slave labor."[8] On could affirm, therefore, that the discrimination this Ruling examines is more linked to the victims' economic status or poverty than it is to their performance of slave labor, which would be one of the consequences of their economic status or poverty.[9]

1 Hereinafter, the Ruling.
2 Paras. 116 and 339 of the Ruling. Hereinafter, each time "para." appears it will be understood to refer to the pertinent paragraph of this Ruling.
3 Paras. 117 to 122.
4 Para. 338
5 Para. 342.
6 Para. 335.
7 Para. 340
8 Para. 340.
9 Para. 343.

4. It is worth pointing out, given that the Court has only now made its Ruling, that in accordance with antecedents in its case law, in the specific case now submitted, the international responsibility of the State, declared in Resolution No. 4 of the Ruling, only relates to the special situation of the aforementioned laborers and not to the "structural and historical discrimination" that existed at the time of the present case which, combined, constitute a context in which the latter took place and to a certain extent explains them, but does not justify them.[10]

Eduardo Vio Grossi, Judge

Pablo Saavedra Alessandri, Secretary

[10] Paras. 110 to 115.

PARTIALLY DISSENTING OPINION OF JUDGE HUMBERTO ANTONIO SIERRA PORTO
INTER-AMERICAN COURT OF HUMAN RIGHTS

LABORERS AT HACIENDA BRASIL VERDE *v.* BRAZIL, OCTOBER 20, 2016 JUDGMENT

(Preliminary Objections, Background, Reparations and Costs)

1. The reason for this opinion is to express the motives for my partial dissent regarding the majority opinion of the Judges of the Inter-American Court of Human Rights (hereinafter "the Court" or "the Tribunal") in the October 20, 2016 Ruling on the case of *Laborers at Hacienda Brasil Verde v. Brazil.*

2. My dissent regards the position adopted refers to Resolution No. 4, in which the Court declared a violation of Article 6(1) of the American Convention on Human Rights, in relation to Article 1(1) thereof, produced within the framework of a "situation of structural and historical discrimination;" as well as Resolution No. 6, which declared a violation of the right to judicial protection, as covered in Article 25 of the American Convention.

A. Dissent Regarding the Violation of Article 6(1) of the American Convention on Human Rights, in Relation to Article 1(1) Thereof, Produced Within the Framework of a Situation of Structural and Historical Discrimination

3. The Court declared in its Ruling on the present case that it "considers the State to incur international responsibility in those cases where structural discrimination exists, and it adopts no specific measures regarding the specific situation of victimization where vulnerability has been determined to apply to a circle of individuals. Their very victimization demonstrates their vulnerability, which demands its own specific protective action, which was omitted in the case of the workers rescued from Hacienda Brasil Verde."[1]

4. Likewise, the Court established that the 85 workers rescued on March 15, 2000, shared "some specific characteristics of victimization" such as: "they were found to be living in poverty; they came from the poorest regions of the country, with the least human development and job prospects; they were illiterate and had little to no formal education." The Court continued, "[s]aid situation of immediate risk for a specific group of people with identical characteristics and from the same parts of the country, has historical origins and has been acknowledged, at least since 1995, when the Brazilian government expressly recognized the existence of "slave labor" in the country."[2]

5. Lastly, the Court observed that "the State did not consider the vulnerability of the 85 workers rescued on March 15, 2000, by virtue of the discrimination they suffered because of the economic situation to which they were subjected."[3] Therefore the State was responsible for the violation of Article 6(1) of the

[1] Para. 338.
[2] Para. 339.
[3] Para. 341.

American Convention, in relation to Article 1(1) thereof, due to the framework of a situation of historical and structural discrimination and because of the economic status of the 85 workers identified in this Ruling."[4]

6. I dissent from this decision of the majority for three reasons. First, I consider that the determination of the existence of a "structural and historical discrimination" requires a deep analysis that was not carried out in the Ruling of this case. A detailed examination taking into account economic, social and public policy aspects in Brazil was not carried out in order to make a determination of this violation; all that was taken into account was that the individuals involved shared certain circumstances (poverty and lack of education).

7. With that in mind, and given the evidence presented in this case, I do not believe it could be concluded that discrimination existed against the 85 laborers rescued in the 2000 audit. There were no authoritative elements of analysis regarding the circumstances in which the workers were found to be living in relation to the rest of the inhabitants of said region of Piauí. Nor was there any evidence presented regarding the living conditions of the inhabitants of Piauí in general, especially the conditions as they were before the recruitment of workers to Hacienda Brasil Verde.

8. Even if poverty can be considered to be a condition that can potentially land victims in positions of vulnerability, an analysis must be carried out to determine that there was in fact an extant discrimination against a specific population. The mere presumption of being affected by poverty cannot have as an automatic consequence that discrimination exists against a specific group. In this case, the Court did not have sufficient evidentiary elements to consider that the entire population of Piauí was subject to "historical and structural discrimination," neither was there evidence showing that the 85 laborers had been subject to it.

9. Even though the determination of the violation makes reference to the 85 workers, it is not clear whether, in order for this "structural and historical discrimination" to exist in particular with respect to them, there must exist a general "structural and historical discrimination" against every person living in poverty in Piauí. The argument the Court made seems to indicate that in every case in which the victims share a characteristic in common (which could place them in a situation of vulnerability), because of this fact alone, there automatically exists structural discrimination.

10. Secondly, I believe that the characteristics the workers in this case share are not sufficient factors for declaring the existence of structural discrimination against them. Even if in general it is true that workers submitted to conditions analogous to slavery share some characteristics, these characteristics are also shared by a great number of people in Brazil, who live in poverty and have little education. Therefore, it is not correct to conclude that there was structural and historical discrimination against the workers at Hacienda Brasil Verde in this case.

[4] Para. 343.

11. Thirdly, the Ruling does not adequately take into consideration the measures adopted by the State to prevent and sanction slavery, particularly in rural areas. Despite efforts made by the State, the determination of the existence of structural and historical discrimination against the workers at Hacienda Brasil Verde would seem to be a consequence of the existence of people in a situation of poverty and also in the situation of slavery in Brazil, and the corresponding condemnation of the State for this circumstance. The existence of social and structural problems does not automatically imply Brazil's international responsibility.

12. In conclusion, I believe the Court's decision regarding the existence of a situation of structural and historical discrimination in Brazil to be incorrect. The Court's decision lacks the necessary detailed analysis and a basis consistent with general characteristics of the population and of the causes and concrete consequences of a situation of discrimination, particularly with reference to elements that can lead to diverging interpretations, such as poverty. Furthermore, I believe that the majority decision ignores state measures adopted throughout the last decades as well as the Brazilian reality, and is founded in a reductionist analysis, according to which the existence of a situation of vulnerability leads directly, without further examination, to the State's international responsibility.

B. Dissent Regarding the Violation of the Right to Judicial Protection, as Provided for in Article 25 of the American Convention

13. The Court determined in the Ruling of the present case that the State is responsible for violating the right to judicial protection, as provided for in Article 25 of the American Convention on Human Rights, in relation to Articles 1(1) and 2 of the same instrument. In order to arrive at this decision, the Court used the same arguments employed previously in order to determine the violation of Article 8 of the American Convention, such as the duration of the proceedings and the lack of due diligence on the part of the authorities.

14. In that respect, I dissent from the majority decision, because I believe the analysis of the violations to Articles 8 and 25 of the Convention must be made differently, and with independently formulated arguments. I believe it to be very relevant that the Court distinguishes between the Articles and the reasons for which they could be violated.

15. I share the opinion of former Judge of the Court Cecilia Medina Quiroga, in that Article 25 enshrines the rights of individuals and the protection of their human rights in the domestic sphere, in a simple, rapid and effective way; whereas Article 8 does not establish the right to a recourse, but rather due process, which is to say, the combination of requirements that must be observed in court proceedings with the goal of protecting the rights of individuals to a resolution of judicial proceedings with the maximum possible justice.[5] Both rights have their distinct natures, and their relationship is one of substance and shape, as this

[5] Partially dissenting opinion of Judge Medina Quiroga, *19 Comerciantes v. Colombia*. Background, Reparations and Costs, July 5, 2004, C109, paras. 1 and 2.

Court has said, because Article 25 enshrines the right to a judicial recourse while Article 8 establishes the way in which it is carried out.[6]

16. The violation of Article 25 occurs: i) when there is no established recourse in State regulations, or said recourse is badly designed within the regulations, and ii) when judges do not apply said recourse correctly. I believe that when these two articles are confused conceptually, it is more difficult to precisely identify the reasons for each one being violated. One ends up using, for example, elements that correspond to "reasonable time frame" in Article 8 for making observations regarding the speed of a recourse required by Article 25.

17. Based on the above, I can conclude that the Court has not made a correct examination of the violations of Articles 8 and 25 of the American Convention, as it has confused their content, and has failed to differentiate between the actions that constitute violations of one and the other. As a consequence, this Court has lacked clarity in its analysis.

Humberto Antonio Sierra Porto, Judge

Pablo Saavedra Alessandri, Secretary

[6] Partially dissenting opinion of Judge Medina Quiroga, *Los Hermanos Gómez Paquiyauri v. Perú*. Background, Reparations and Costs, July 8, 2004, C110, para. 3.