

INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF THE HACIENDA BRASIL VERDE WORKERS V. BRAZIL

JUDGMENT OF OCTOBER 20, 2016

(Preliminary objections, merits, reparations and costs)

In the case of the *Hacienda Brasil Verde Workers*,

the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”), composed of the following judges:¹

Eduardo Ferrer Mac-Gregor Poisot, acting President
Eduardo Vio Grossi, acting 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 American Convention” or “the Convention”) and Articles 31, 32, 42, 65 and 67 of the Rules of Procedure of the Court (hereinafter “the Rules of Procedure” or “the Court’s Rules of Procedure”), delivers this judgment, structured as follows:

¹ Judge Roberto F. Caldas, a Brazilian national, did not take part in the deliberation of this judgment, in accordance with the provisions of Articles 19(2) of the Court’s Statute and 19(1) of its Rules of Procedure.

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I
INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE

1. *The 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 to the Court the case of the *Hacienda Brasil Verde Workers v. the Federative Republic of Brazil* (hereinafter "the State" or "Brazil"). The case relates to a supposed practice of forced labor and debt bondage in Hacienda Brasil Verde, located in the state of Pará. It is alleged that the facts of the case took place in a context in which, each year, tens of thousands of workers were subjected to slave labor. In addition, it is alleged that the workers who were able to escape gave declarations regarding the existence of death threats to those who abandoned the hacienda; the prohibition to leave freely; the absence of salaries or the existence of a paltry wage; their debts to the hacienda, and the lack of decent housing, food and health care. This situation could presumably be attributed to the State because, since 1989, it had been aware of the existence of these practices in general, and specifically in the Hacienda Brasil Verde and, despite this awareness, it had not taken reasonable steps to prevent or to respond to the situation, and had not provided the presumed victims with an effective judicial mechanism to protect their rights, to punish those responsible, and to allow the presumed victims to obtain redress. Lastly, it was alleged that the State was internationally responsible for the disappearance of two adolescents that had been reported to the state authorities on December 21, 1988, allegedly without any effective measures having been taken to discover their whereabouts.

2. *Procedure before the Commission.* The case was processed before the Inter-American Commission as follows:

a) *Petition.* On November 12, 1998, the Inter-American Commission received the initial petition lodged by the *Comissão Pastoral da Terra* (hereinafter also "CPT") and the Center for Justice and International Law (hereinafter "CEJIL").

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

i) *Conclusions.* The Commission concluded that the State was internationally responsible for:

a. Violation of the rights recognized in Articles 6, 5, 7, 22, 8 and 25 of the Convention, in relation to Article 1(1) of this instrument, of the Hacienda Brasil Verde Workers found in the inspections carried out in 1993, 1996, 1997 and 2000.

b. Violation of the rights recognized in Articles I, II, XIV, VIII and XVIII of the American Declaration of the Rights and Duties of Man (hereinafter "the American Declaration" or "the Declaration") and, after September 25, 1992, violation of Articles 8 and 25 of the Convention, in relation to Article 1(1) of this instrument, to the detriment of Iron Canuto da Silva and Luis Ferreira da Cruz, and their next of kin, including José Teodoro da Silva and Miguel Ferreira da Cruz. Also, for violation of Article I of the Declaration and, after September 25, 1992, of Article 5 of the Convention, of the next of kin of Iron Canuto da Silva and Luis Ferreira da Cruz.

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

d. Failure to adopt sufficient and effective measures to ensure, without discrimination, the rights of the workers found during the 1993, 1996, 1997 and

2000 inspections, in accordance with Article 1(1) of the Convention, in relation to the rights recognized in Articles 6, 5, 7, 22, 8 and 25 of this instrument.

- e. Failure to adopt measures in accordance with Article II of the Declaration, in relation to Article XVIII of this instrument and, after September 25, 1992, with Article 1(2) of the Convention, in relation to the rights recognized in Articles 8 and 25 of this instrument, to the detriment of the workers Iron Canuto da Silva, Luis Ferreira da Cruz, Adailton Martins dos Reis, José Soriano Da Costa, and of the next of kin of the first two, who include José Teodoro da Silva and Miguel Ferreira da Cruz.
- f. Application of the statute of limitations in this case in violation of Articles 8(1) and 25(1) of the Convention, in relation to the obligations established in Article 1(1) and in Article 2 of this instrument, to the detriment of the workers Iron Canuto da Silva, Luis Ferreira da Cruz, Adailton Martins dos Reis, José Soriano Da Costa, and of the next of kin of the first two, who include José Teodoro da Silva and Miguel Ferreira da Cruz, as well as of the workers who were in Hacienda Brasil Verde during the 1997 inspections.

ii) *Recommendations.* Consequently, the Commission made the following recommendations to the State:

- a. Make adequate pecuniary and non-pecuniary reparation for the human rights violations. In particular, the State should ensure restitution to the victims of the salaries owed for the work performed, together with the sums of money taken from them illegally. If necessary, this restitution may be made from the illegal earnings of the Hacienda's owners.
- b. Investigate the facts relating to the human rights violations declared in the Admissibility and Merits Report concerning slave labor, and conduct the investigation impartially and effectively and within a reasonable time in order to clarify the facts fully, identify those responsible, and impose the corresponding sanctions.
- c. Investigate the facts related to the disappearance of Iron Canuto da Silva and Luis Ferreira da Cruz and conduct the investigations impartially and effectively and within a reasonable time in order to clarify the facts fully, identify those responsible, and impose the corresponding sanctions.
- d. Order the corresponding administrative, disciplinary or criminal measures in relation to the acts or omissions of the State officials that contributed to the denial of justice and to the impunity of the facts of the case. In this regard, special emphasis should be placed on the fact that administrative rather than criminal proceedings were instituted to investigate disappearance; that administrative and labor proceedings were instituted to investigate slave labor, and that the statute of limitations was applied to the only criminal investigation opened with regard to this crime.
- e. Establish a mechanism to help locate the victims of slave labor and Iron Canuto da Silva, Luis Ferreira da Cruz, Adailton Martins dos Reis, José Soriano da Costa, as well as the next of kin of the first two, José Teodoro da Silva and Miguel Ferreira da Cruz, in order to make reparation to them.
- f. Continue implementing public policies, and legislative and other measures to eradicate slave labor. In particular, the State should monitor slave labor and punish those responsible at all levels.
- g. Reinforce the legal system and create mechanisms for coordination between the criminal jurisdiction and the labor jurisdiction in order to close any gaps in the investigation, prosecution and punishment of those responsible for the crimes of servitude and forced labor.
- h. Ensure strict compliance with labor laws concerning work shifts and payment equal to that of other salaried workers.
- i. Take the necessary measures to eliminate any type of racial discrimination; in particular, organize campaigns to raise the awareness of the general public and State officials, including agents of justice, regarding discrimination and subjection to servitude and forced labor.

c) *Notification to the State.* The Admissibility and Merits Report was notified to the State in a communication of January 4, 2012, and the State was granted two months to provide information on compliance with the recommendations. Following ten extensions of this time limit, 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, the Commission submitted the facts and the human rights violations described in the Merits Report to the jurisdiction of the Court, "in order to obtain justice."² Specifically, the Commission submitted to the Court the State's acts and omission that took place or continued to occur after December 10, 1998, date on which the State accepted the Court's jurisdiction,³ without prejudice to the possibility that the State accept the Court's jurisdiction to examine the totality of this case as stipulated in Article 62(2) of the Convention.

4. *Requests of the Inter-American Commission.* Based on the above, the Inter-American Commission asked the Court to declare the international responsibility of Brazil for the violations described in the Admissibility and Merits Report and to order the State, as measures of reparations, to comply with the recommendations included in that report (*supra* para. 2).

II PROCEEDINGS BEFORE THE COURT

5. *Notification to the State and to the representatives.* The Commission's submission of the case was notified to the State and to the representatives on April 14, 2015.

6. *Brief with motions, pleadings and evidence.* On June 17, 2015, the representatives presented their brief with motions, pleadings and evidence (hereinafter "motions and pleadings brief"), pursuant to Articles 25 and 40 of the Court's Rules of Procedure.⁴

7. *Answering brief.* On September 14, 2015, the State submitted to the Court its brief answering the submission of the case and the motions and pleadings brief and with

² The Inter-American Commission designated Commissioner Felipe González and Executive Secretary, Emilio Álvarez Icaza L., as delegates and Deputy Executive Secretary, Elizabeth Abi-Mershed, and Silvia Serrano Guzmán, an Executive Secretariat lawyer, as legal advisers.

³ These acts and omissions include: (1) The situation of forced labor and debt bondage, similar to slavery, after December 10, 1998; (2) The acts and omissions that have led to the impunity of all the facts of the case. This impunity continued on the date that the State accepted the jurisdiction of the Court and persists to date, and (3) The disappearance of Iron Canuto da Silva and Luis Ferreira da Cruz, which subsisted following the date on which the State accepted the Court's jurisdiction.

⁴ The representatives asked the Court to declare the international responsibility of the State for the following: (1) violation of the obligation to ensure the prohibition of slavery, servitude and trafficking in persons established in Article 6 of the Convention, in relation to the rights to juridical personality, personal integrity, personal liberty and safety, 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 those individuals who were working in Hacienda Brasil Verde following the acceptance of the Court's contentious jurisdiction. This responsibility is increased owing to the violation of the principle of non-discrimination and the rights of the child established in Articles 1(1) and 19 of this instrument; (2) violation of the rights to judicial protection and judicial guarantees established in Articles 25 and 8, in relation to Article 1(1) of the Convention, of those individuals who were working in Hacienda Brasil Verde following the acceptance of the Court's contentious jurisdiction; (3) failure to comply with the obligation to ensure the rights to juridical personality, life, personal integrity and liberty of Luis Ferreira da Cruz established in Articles 3, 4, 5 and 7 of the Convention, in relation to Articles 1(1), 8 and 25 of this instrument; (4) violation of the rights to judicial guarantees, judicial protection and personal integrity of the next of kin of Luis Ferreira da Cruz established in Articles 8, 25 and 5 of the Convention, in relation to Article 1(1) of this instrument, and (5) the continuing violation of the rights to judicial guarantees and judicial protection established in Articles 8 and 25 of the Convention, of those who were working in Hacienda Brasil Verde prior to 1998.

preliminary objections (hereinafter “answer” or “answering brief”), in accordance with Article 41 of the Court’s Rules of Procedure.⁵

8. *Observations on the preliminary objections.* In briefs received on October 28 and 30, 2015, the representatives and the Commission submitted their observations on the preliminary objections filed by the State.

9. *Public hearing.* In an order of the President of the Court of December 11, 2015,⁶ and an order of the Court of February 15, 2016,⁷ the parties and the Commission were called to a public hearing that was held on February 18 and 19, 2016, during the Court’s 113th regular session.⁸ During the hearing, the Court received the statements of two witnesses proposed by the representatives and four expert witnesses proposed by the Commission, the representatives, and the State, as well as the final oral observations of the Commission, and the final oral arguments of the representatives and the State. In addition, the said orders required seven witnesses and ten expert witnesses proposed by the representatives and the State to submit affidavits.

10. *Amici curiae.* The Court received seven *amici curiae* briefs⁹ presented by: (1) the Amazonian Human Rights Clinic, Universidade Federal do Pará;¹⁰ (2) the Human Rights and Democracy Institute of the Pontificia Universidad Católica del Perú;¹¹ (3) the International Trade Union Confederation;¹² (4) the Universidad del Norte de Colombia;¹³ (5) Human

⁵ In briefs dated June 8 and 30, and August 10, 2015, the State appointed 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 as its Agents.

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

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

⁸ There appeared at this hearing: (a) For the Inter-American Commission: Francisco Eguiguren Praeli, Commissioner, and Silvia Serrano Guzmán, adviser to the Executive Secretariat; (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, Héliida Alves Girão, Giordano da Silva Rosseto, Maria Cristina M. dos Anjos, Gustavo Guimarães, Nilma Lino Gomes, Cecília Bizerra Souza and Claudio Fachel.

⁹ Regarding these *amici curiae*, the State objected that the translations of the briefs of the Universidad del Norte de Colombia, the Human Rights and Democracy Institute of the Pontificia Universidad Católica del Peru, and Human Rights in Practice were not submitted within the corresponding time frame and, consequently, requested that the Court declare them inadmissible. It also alleged that the *amicus curiae* of Tara Melish, associate professor at the State University of New York, expressly referred to the State’s answering brief despite the fact that this is for the exclusive use of the parties and the Inter-American Court during the processing of the case, so that it should also be declared inadmissible. In this regard, the Court noted that the translation into Portuguese of the brief of the Universidad del Norte de Colombia was presented on March 14, 2016, while the translations of the briefs of the Human Rights and Democracy Institute of the Pontificia Universidad Católica del Peru, and of Human Rights in Practice were presented on March 17, 2016. Consequently, the Court will not take into consideration the briefs presented as *amici curiae* by the Human Rights and Democracy Institute of the Universidad Católica del Peru, and by Human Rights in Practice, due to their late presentation. Nevertheless, the brief of the Universidad del Norte de Colombia was submitted within the time frame granted by the Court. In the case of the State’s objection to the brief presented by Tara Melish, the Court points out that the State of Brazil’s answering brief in this case had not been made public; however, it notes that this document is not confidential in nature and did not contain sensitive information that the State might have requested be kept confidential; therefore, the State’s request that it be declared inadmissible is denied.

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, folio 1.

¹² The brief was signed by Sharan Burrow.

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

Rights in Practice;¹⁴ (6) Tara Melish, associate professor at the State University of New York, and (7) the Business and Human Rights Project of the University of Essex.¹⁵

11. *On-site procedure.* In an order of the acting President of February 23, 2016,¹⁶ it was decided to conduct an on-site procedure in the Federative Republic of Brazil owing to the contested facts that are the purpose of the litigation and taking into account the need to obtain specific evidence to decide the dispute. This decision was taken by the full Court in application of Article 58(a) and (d) of the Rules of Procedure. Thus, on June 6 and 7, 2016, a delegation from the Court¹⁷ conducted an on-site procedure in order to receive the statements of five presumed victims in this case and the statements for information purposes of five State officials responsible for combating slavery in Brazil.

12. *Final written arguments and observations.* On June 28, 2016, the representatives and the State presented their respective final written arguments and the Inter-American Commission forwarded its final written observations.

13. *Observations of the parties and the Commission.* The acting President granted the parties and the Commission a time frame for presenting any observations they deemed pertinent on the annexes forwarded by the State and the representatives with their final written arguments. On August 5 and 6, the State and the Commission, respectively, forwarded the requested observations. The representatives sent no observations within the respective time frame.

14. *Deliberation of this case.* The Court began deliberating this judgment on October 18, 2016.

III JURISDICTION

15. The Inter-American Court has jurisdiction to hear this case pursuant to Article 62(3) of the Convention because Brazil has been a State Party to the American Convention since September 25, 1992, and accepted the contentious jurisdiction of the Court on December 10, 1998.

IV PRELIMINARY OBJECTIONS

16. The State filed 10 preliminary objections in its answering brief. They related to: **A.** Inadmissibility of the submission of the case to the Court owing to the publication of the Merits Report by the Commission; **B.** Lack of jurisdiction *ratione personae*, with regard to unidentified presumed victims, those who were identified but had not granted a power of attorney, and those who did not appear in the Commission's Merits Report or who were not involved in the facts of the case; **C.** Lack of jurisdiction *ratione personae* for violations in abstract terms; **D.** Lack of jurisdiction *ratione temporis* with regard to facts prior to the date on which the State accepted the Court's jurisdiction; **E.** Lack of jurisdiction *ratione temporis* concerning facts prior to the State's adhesion to the American Convention; **F.**

¹⁴ The brief was signed by Hellen Duffy.

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

¹⁶ Order concerning the on-site procedure of February 23, 2016, available at: http://www.corteidh.or.cr/docs/asuntos/trabajadores_23_02_16.pdf

¹⁷ The Court's delegation that conducted the on-site procedure consisted of Judge Eduardo Ferrer Mac-Gregor Poisot, acting President in this case, and Judges Eugenio Raul Zaffaroni and Patricio Pazmiño Freire; Pablo Saavedra Alessandri, Secretary of the Court, and Carlos E. Gaio, a lawyer from the Court's Secretariat.

Lack of jurisdiction *ratione materiae* based on violation of the principle of the subsidiary nature of the inter-American system (rule of the fourth instance); **G.** Lack of jurisdiction *ratione materiae* regarding presumed violations of the prohibition of trafficking in persons; **H.** Lack of jurisdiction *ratione materiae* concerning supposed violations of labor rights; **I.** Failure to exhaust domestic remedies, and **J.** Prescription of the petition before the Commission as regards the claims for reparation for pecuniary and non-pecuniary damage.

17. Subsequently, in its final written arguments, the State filed a new preliminary objection concerning the Court's supposed lack of jurisdiction in relation to the inspections carried out in 1999 and 2002. This preliminary objection will not be examined due to late presentation.

18. When deciding the objections filed by the State, the Court recalls that it will only consider as preliminary objections those arguments that, exclusively, are or could be of this nature based on their content and purpose; in other words, if decided favorably, they would prevent the continuation of the proceedings and a ruling on the merits.¹⁸ It has been the Court's consistent criteria that a preliminary objection should present objections relating to the admissibility of a case or to the Court's competence to examine a specific matter or part of one, due to the person, matter, time or place.¹⁹

19. The Court will now proceed to analyze the aforementioned preliminary objections in the order in which the State presented them.

A. Alleged inadmissibility of the submission of the case to the Court owing to the publication of the Merits Report by the Commission

A.1. Arguments of the State and observations of the Commission and of the representatives

20. The **State** indicated that the preliminary report issued by the Commission could not be published by either the parties or the Commission. It also argued that the Commission's final report, referred to in Article 50 of the American Convention, could only be published when the time frame established for complying with the recommended measures had expired or by the vote of the absolute majority of its members. The publication of that final report constituted "the maximum sanction" that a State could suffer under the procedure before the Commission. The State asserted that, before submitting this case to the Court, the Commission had published on its website the complete text of Admissibility and Merits Report No. 169/2011 of November 3, 2011, and that this meant that it was logically impossible to submit the case to the Court's consideration, because the Convention authorized the Commission to issue a final report and eventually publish it, or to submit the case to the jurisdiction of the Court, possibilities that were mutually exclusive. The State considered that the publication of the Commission's report had violated Articles 50 and 51 of the Convention, and therefore asked the Court to declare the case inadmissible.

21. The **Commission** indicated that the State's allegation did not constitute a preliminary objection because it did not refer to issues of jurisdiction, or to the admissibility requirements established in the Convention. It also asserted that the report issued under Article 50 of the Convention constituted a preliminary report of a confidential nature, which

¹⁸ Cf. *Case of Cepeda Vargas v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of May 26, 2010, Series C No. 213, para. 35, and *Case of Maldonado Ordoñez v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of May 3, 2016. Series C No. 311, para. 20.

¹⁹ Cf. *Case of Las Palmeras v. Colombia. Preliminary objections*. Judgment of February 4, 2000, Series C No. 67, para. 34, and *Case of Maldonado Ordoñez*, para. 20.

could lead to two actions: submission of the case to the Court or publication of the report. However, once one of those options had been chosen, the report relinquished its initial nature. The Commission indicated that, after submitting the matter to the Court, it had published the final report (on Admissibility and Merits) on its website according to its consistent practice; an action that did not violate the Convention. Furthermore, the Commission observed that the State's indication that the Admissibility and Merits Report had been published before the case was submitted to the Court related to an electronic link with access as of September 10, 2015, which was after the submission of the case. Lastly, the Commission indicated that the State had failed to present any evidence of this supposedly undue publication.

22. The **representatives** indicated that the State had not presented any argument based on person, matter, time or place that could affect the Court's competence, and therefore asked the Court to reject this objection. In addition, they indicated that the State was attempting to present aspects of the procedure before the Commission as a preliminary objection. Lastly, the representatives argued that the publication of the Merits Report did not constitute a grave error, and it was not prohibited from publishing it.

A.2. Considerations of the Court

23. This Court has consistently interpreted that Articles 50 and 51 of the Convention allude to two different reports; the first identified as a preliminary report and the second as the final report. Each report has a distinct nature, because they correspond to different stages.²⁰

24. The preliminary report responds to the first stage of the procedure and is established in Article 50 of the Convention, which stipulates that, "if a settlement is not reached, the Commission shall draw up a report setting forth the facts and stating its conclusions"; the report is then forwarded to the State concerned. This document is of a preliminary nature, so that the report transmitted to the State is confidential in nature to allow the latter to adopt the Commission's suggestions and recommendations and thus settle the dispute. The preliminary and confidential nature of the document means that the State is not authorized to publish it. Accordingly, based on the principles of equality and procedural balance between the parties, it is reasonable to consider that the Commission, also, is unable, either practically or legally, to publish this preliminary report.²¹

25. When three months have elapsed, if the matter has not been resolved by the State to which the preliminary report was sent by complying with the recommendations made therein, the Commission is authorized, within that period, to decide whether to submit the case to the Court or to publish the report in accordance with Article 51.²²

26. Therefore, the report established in Article 50 may be published, provided this occurs after the case has been submitted to the Court. This is because, at that moment of the procedure, the State is aware of its contents and has had the opportunity to comply with the recommendations. Therefore, it cannot be considered that the principle of the procedural balance between the parties has been violated. This has been the Commission's consistent practice for many years, in particular since the 2009 amendment of its Rules of Procedure.

²⁰ Cf. *Certain attributes of the Inter-American Commission on Human Rights (Arts. 41, 42, 44, 46, 47, 50 and 51 of the American Convention on Human Rights)*, Advisory Opinion OC-13/93 of July 16, 1993, para. 53.

²¹ Cf. *Certain attributes of the Inter-American Commission on Human Rights*, para. 48.

²² Cf. *Certain attributes of the Inter-American Commission on Human Rights*, para. 50.

27. In this case, the State affirmed that the Commission had published Admissibility and Merits Report No. 169/2011 before submitting it to the Court. The Commission indicated that it published the report on its website on September 10, 2015, after submitting the matter to the jurisdiction of the Court on March 12, 2015, and presented evidence to prove this. The State failed to prove its assertion that the report in this case was published in a way that differed from that described by the Commission or in a manner that was contrary to the American Convention.

28. Consequently, the Court finds that the State's argument is inadmissible.

B. Alleged lack of jurisdiction *ratione personae* regarding the presumed victims

29. The Court will now indicate, first, the State's arguments concerning the objections related to presumed victims: (i) identified and represented; (ii) without proof of representation; (iii) without power of attorney; (iv) unrelated to the facts of the case; (v) with a different identity, or without due representation for next of kin, and (vi) who were not mentioned in the Merits Report. Second, the Court will review the observations of the Commission and the representatives. It will then make the corresponding analysis.

B.1. Arguments of the State

i) Presumed victims identified and represented

30. The **State** argued that the representatives had only accredited the powers of attorney of 33 presumed victims who were supposedly found in Hacienda Brasil Verde in the year 2000.²³ In addition, it indicated that the Court should analyze the facts of the case only with regard to the presumed victims who were correctly represented, and those listed in Admissibility and Merits Report No. 169/11 duly identified and involved in the events that took place in that Hacienda. The State also pointed out that, in their brief, the representatives had not mentioned the name of Francisco das Chagas Bastos Sousa; nevertheless, a power of attorney had been presented in his name. Also, no power of attorney or equivalent document had been submitted for the presumed victim or for the next of kin of Luis Ferreira da Cruz, presumably a victim of forced disappearance.

ii) Presumed victims without proof of representation

31. The State indicated that the representatives of the presumed victims should present a power of attorney signed by the presumed victim or by a family member, which should fully identify the party granting it. In addition, the State noted that, although the representatives had complied with the formal requirements stipulated by the Court when presenting the powers of attorney, problems persisted that made it difficult to identify some names and some presumed victims who supposedly were represented.²⁴

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.

²⁴ 1. Firmino da Silva (supposedly deceased and represented by his supposed wife Maria da Silva Santos); Gonçalo Constancio da Silva (supposedly deceased and represented by his supposed wife Lucilene Alves da Silva), and José Cordeiro Ramos (supposedly deceased and represented by his wife Elizete Mendes Lima).

iii) Presumed victims without power of attorney

32. The State affirmed that the Court had waived the requirement for proof of the formal representation of presumed victims in specific cases, but that this criteria was not applicable in the present matter because the presumed victims had not been executed and there had been no forced disappearances. In addition, based on the facts, it was not possible to distinguish any special characteristics of the group of presumed victims that could justify dispensing with the presentation of proof of the powers of attorney. Moreover, it would not be reasonable to waive the requirement of a power of attorney before the Court, due merely to the existence of a broad universe of presumed victims, because this would lead to legal uncertainty and run counter to the careful and balanced analysis made by the Court in previous cases.

iv) Presumed victims unrelated to the facts of the case

33. The State argued that the representatives had presented the powers of attorney of 12 supposed Hacienda Brasil Verde workers,²⁵ but there was no evidence or indication that they had been employed by this hacienda, even though their names appeared in the Admissibility and Merits Report and in the report on the inspection made by the Special Mobile Inspection Group in March 2000.

v) Presumed victims with a different identity, or lack of due representation for next of kin

34. The State indicated that doubts and inconsistencies existed regarding the identity of the victims represented, because the representatives had provided incomplete or imprecise information and the identification numbers were contradictory. Furthermore, it asked the representatives to present the death certificates of the presumed victims who were deceased together with proof of the relationship between the supposed next of kin and the deceased presumed victims.

vi) Presumed victims who were not mentioned in the Merits Report

35. Lastly, the State indicated that the Court did not have competence to examine the facts relating to presumed victims Francisco das Chagas Bastos Souza, José Francisco Furtado de Sousa, Antônio Pereira dos Santos and Francisco Pereira da Silva, because they had not been mentioned in Admissibility and Merits Report No. 169/11. It also indicated that, regarding José Francisco Furtado de Sousa, there was no reasonable motive to suppose that this was Gonçalo Luiz Furtado, indicated as victim in the Merits Report.

36. The State asked the Court to exercise its jurisdiction only with regard to the 18 presumed victims "duly represented, identified and related" to the facts in Admissibility and Merits Report No. 169/11.²⁶

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.

²⁶ They are: 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. Rogério Felix Silva.

B.2. Observations of the Commission

37. The ***Commission*** indicated that the State's arguments should be considered inadmissible, because they corresponded to an aspect that would be studied when examining the merits of the case. It added that, in this case, Article 35(2) of the Court's Rules of Procedure was applicable, because the individuals who were not included in the Admissibility and Merits Report could not be excluded from the Court's ruling. The Commission indicated that the Court should maintain a degree of flexibility, or order a procedure to obtain the evidence it considered pertinent to identify the greatest number of victims, considering that the lack of complete information on them was due to the nature of the case and the State's failure to provide documentation and information regarding the respective inspections.

38. Additionally, the Commission affirmed that the lack of a power of attorney could not constitute a sufficient reason for an individual not to be identified and declared a victim in an individual case. Consequently, the Court should determine whether the presumed victims who had not granted a power of attorney were represented reasonably by the actual representatives, including for the subsequent stages of the proceedings. This is because the representatives of the presumed victims had not deliberately or expressly excluded individuals regarding whom they did not have a power of attorney.

39. Lastly, the Commission indicated that the State's arguments did not constitute a preliminary objection because, according to Article 35(2) of the Court's Rules of Procedure, the identification of the victims should be made based on the context of the matter, and also by taking the necessary steps to ensure the representation of every possible presumed victim in the inter-American proceedings.

B.3. Observations of the representatives

40. The ***representatives*** argued that, in view of the complexity of the case, the massive and collective nature of the violations, as well as other contextual factors, it was reasonable to apply the provisions of Article 35(2) of the Court's Rules of Procedure in order to make a collective identification of all the presumed victims found in Hacienda Brasil Verde during the 1993, 1996, 1997 and 2000 inspections.

41. They also indicated that they had been able to identify 49 individuals from the 1993 inspection; 78 from the 1996 inspection; 93 from the visit in 1997, and 85 from the inspection in 2000. They indicated that, insofar as possible and despite the difficulties that existed, they had made an effort to individualize with first and last names at least all of those whose documents they had been able to access, without losing sight of the fact that 20 years had passed since the first inspection, which made it difficult to contact them. In addition, the representatives indicated that, in the 2000 inspection, it had been verified that most presumed victims were illiterate, came from rural areas, and were continually on the move seeking a livelihood; also few of them had official identification papers.

42. The representatives also indicated that neither the American Convention nor the Rules of Procedure of the Commission or the Court required the presumed victims to have formal legal representation in the inter-American proceedings. Therefore, there were few formal requirements for access to the protection mechanisms. Moreover, they indicated that the presumed victims might choose to have legal representatives, but were not obliged to do so and, also, in its case law, the Court had established that it was unnecessary to be represented by a specific power of attorney.

43. In addition, they argued that the Court should take into consideration the remote location of Hacienda Brasil Verde and the difficulties of access, the situation of exclusion, vulnerability, illiteracy and mobility of the presumed victims, and that they had never complained about the way they were represented in the international proceedings. Lastly, the representatives underscored the Court's case law that, in certain circumstances, the list of victims might vary during the processing of the case.

B.4. Considerations of the Court

44. The Court notes that the State had filed various preliminary objections against the list of 33 presumed victims indicated in the Admissibility and Merits Report and considered that only 18 presumed victims were duly represented, identified and mentioned in that report.

45. In addition, the Court recalls that the victims must be indicated in the brief submitting the case and in the Commission's report. However, when they were not indicated in these documents, on some occasions and owing to the particularities of each case, the Court has considered individuals who were not included as such in the petition as presumed victims, provided that the right to defense of the parties had been respected and the presumed victims were related to the facts described in the Merits Report and to the evidence provided to the Court,²⁷ taking into account also the magnitude of the violation.²⁸

46. Regarding the identification of the presumed victims, the Court recalls that Article 35(2) of its Rules of Procedure establishes that, when it has been justified that it was not possible to identify some of the presumed victims of the facts of the case because it concerned massive or collective violations, the Court will decide, in due time, whether to consider them as victims based on the nature of the violation.²⁹

47. Thus, the Court has evaluated the application of Article 35(2) of the Rules of Procedure based on the particular characteristics of each case,³⁰ and has applied Article 35(2) in massive or collective cases with difficulties to identify or contact all the presumed victims owing, for example, to the presence of armed conflict,³¹ displacement³² or when the

²⁷ Cf. *Case of the Plan de Sánchez Massacre v. Guatemala. Merits*. Judgment of April 29, 2004. Series C No. 105, para. 48, and *Case of the Ituango Massacres v. Colombia*. Judgment of July 1, 2006, Series C No. 148, para. 91.

²⁸ Cf. *Case of the Massacres of El Mozote and neighboring places v. El Salvador. Merits, reparations and costs*. Judgment of October 25, 2012. Series C No. 252, para. 51.

²⁹ *Case of the Río Negro Massacres v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of September 4, 2012. Series C No. 250, para. 48, and *Case of the Massacres of El Mozote and neighboring places*, para. 50.

³⁰ It should be pointed out that the Court has applied Article 35(2) of its Rules of Procedure in the following cases: *Case of the Río Negro Massacres v. Guatemala*; *Case of Nadege Dorzema et al. v. Dominican Republic. Merits, reparations and costs*. Judgment of October 24, 2012. Series C No. 251; *Case of the Massacres of El Mozote and neighboring places v. El Salvador*; *Case of the Afrodescendant Communities Displaced from the Río Cacarica Basin (Operation Genesis) v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of November 20, 2013. Series C No. 270, and *Case of the Campesina Community of Santa Bárbara v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of September 1, 2015. Series C No. 299. In addition, it has rejected its application in the following cases: *Case of Barbani Duarte et al. v. Uruguay. Merits, reparations and costs*. Judgment of October 13, 2011. Series C No. 234; *Case of the Human Rights Defender et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of August 28, 2014. Series C No. 283; *Case of García and family members v. Guatemala. Merits, reparations and costs*. Judgment of November 29, 2012. Series C No. 258; *Case of Suárez Peralta v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of May 21, 2013. Series C No. 261; *Case of J. v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of November 27, 2013. Series C No. 275; *Case of Rochac Hernández et al. v. El Salvador. Merits, reparations and costs*. Judgment of October 14, 2014. Series C No. 285, and *Case of Argüelles et al. v. Argentina. Preliminary objections, merits, reparations and costs*. Judgment of November 20, 2014. Series C No. 288.

³¹ Cf. *Case of the Río Negro Massacres*, para. 48, and *Case of the Afrodescendant Communities Displaced from the Río Cacarica Basin (Operation Genesis)*, para. 41.

bodies of the presumed victims have been destroyed by fire,³³ or in cases in which entire families have been disappeared, so that nobody could speak on their behalf.³⁴ It has also taken into account the difficulting of accessing areas in which the facts occurred,³⁵ the absence of records of the inhabitants of a place,³⁶ and the passage of time,³⁷ as well as particular characteristics of the presumed victims in a case, for example, when they are part of family clans with similar first and last names,³⁸ or in the case of migrants.³⁹ It has also considered the State's conduct, for example, when it is argued that the failure to investigate contributed to the incomplete identification of the presumed victims.⁴⁰

48. The Court notes that, in its Merits Report, the Commission indicated that it did not have information on the identification of all the victims. Thus, the Court considers that the problems described in Article 35(2) of the Rules of Procedure regarding the identification of the presumed victims in cases of collective violations may be understood in this case based on: (i) the context of the case, (ii) the 20 years that have passed; (iii) the difficulty to contact the presumed victims owing to their situation of exclusion and vulnerability, and (iv) registration omissions that can be attributed to the State.

49. The Court considers that the specific characteristics of this case allow it to conclude that there are reasonable grounds to justify the fact that the list of presumed victims included in the Commission's Admissibility and Merits Report may contain possible inconsistencies both in the full identification of the presumed victims and in their representation. Therefore, the Court decides to apply Article 35(2) of its Rules of Procedure and, when examining the merits of the case, it will determine the appropriate measures in this regard and the identification of the presumed victims if necessary. Consequently, the Court rejects the preliminary objections filed by the State concerning the identification and representation of the presumed victims, as well as the lack of a connection to the case of some of the presumed victims included in the Merits Report presented by the Commission.

50. Furthermore, the Court considers, notwithstanding the analysis it will make regarding determination of the presumed victims (*infra* para. 189), that examination of the evidence and the facts relating to verification of the working relationship between the presumed victims and the said hacienda corresponds to an analysis of the merits of this case. Therefore, the Court rejects the preliminary objection concerning the supposed absence of a connection to the facts of the case of some presumed victims.

C. Alleged lack of jurisdiction *ratione personae* for violations in abstract terms

C.1. Arguments of the State and observations of the Commission and of the representatives

³² Cf. *Case of Nadege Dorzema et al.*, para. 30, and *Case of the Afrodescendant Communities Displaced from the Río Cacarica Basin (Operation Genesis)*, para. 41.

³³ Cf. *Case of the Massacres of El Mozote and neighboring places*, para. 30.

³⁴ Cf. *Case of the Río Negro Massacres*, para. 48.

³⁵ Cf. *Case of the Afrodescendant Communities Displaced from the Río Cacarica Basin (Operation Genesis)*, para. 41.

³⁶ Cf. *Case of the Massacres of El Mozote and neighboring places*, para. 30, and *Case of the Río Negro Massacres*, para. 48.

³⁷ Cf. *Case of the Río Negro Massacres*, para. 51, and *Case of the Afrodescendant Communities Displaced from the Río Cacarica Basin (Operation Genesis)*, para. 41.

³⁸ Cf. *Case of the Río Negro Massacres*, para. 48.

³⁹ Cf. *Case of Nadege Dorzema et al.*, para. 30.

⁴⁰ Cf. *Case of the Río Negro Massacres*, para. 48, and *Case of the Massacres of El Mozote and neighboring places*, para. 50.

51. The **State** indicated that, in a contentious case, it was essential that any legislative measure that was contested infringed the liberties of at least one specific individual because, to the contrary, the Court did not have competence to assess the compatibility of that measure with the Convention. In this case, it indicated that the Court did not have competence to examine the representatives' request concerning the adoption of legislative measures to avoid retrogression in the combat against slave labor in Brazil. This was because the said request was conditional on the existence of draft laws seeking to amend article 149 of the Penal Code, and that such draft laws had not been enacted.

52. The **Commission** observed that the representatives had advised the Court of the legislative measures that were being adopted at that time, not with regard to the specific victims in this case, but rather to provide a context that demonstrated the relevance of the matter and to provide the Court with essential elements so that any measures of non-repetition that might be ordered accorded with such measures and were pertinent for the existing situation of slave labor, including the legislative framework.

53. The **representatives** stated that they had requested "as a measure of reparation," that the Court indicate to the State that it should abstain from adopting legislative measures that represented a retrogression in the combat against slave labor in Brazil, due to the existence of draft legislation that sought to limit the scope of article 149 of the Penal Code in relation to practices similar to slavery.

C.2. Considerations of the Court

54. The Court notes that the State's argument referred to a measure of reparation requested by the representatives to the effect that the Court order the State to refrain from adopting legislative measures that could represent a retrogression in the combat against slave labor in Brazil. The Court recalls that, in order to grant a measure of reparation, it must verify that there is a causal nexus between the facts of the case, the violations that have been declared, the damage proved, and the measures requested.⁴¹ Consequently, the Court considers that it is not possible to analyze the objection filed by the State, because it cannot be decided at a preliminary stage, but depends directly on the merits of the matter.⁴² Therefore, the Court rejects this preliminary objection.

D. Alleged lack of jurisdiction *ratione temporis* with regard to facts prior to the date of acceptance of the Court's jurisdiction, and alleged lack of jurisdiction *ratione temporis* in relation to facts prior to the State's adhesion to the Convention

55. The Court will analyze together the two preliminary objections on temporal limitations (*ratione temporis*) filed by the State, because they refer to related assumptions and involve similar arguments by the State, the Commission and the representatives.

D.1. Arguments of the State and observations of the Commission and of the representatives

⁴¹ Cf. *Case of Ticona Estrada et al. v. Bolivia. Merits, reparations and costs.* Judgment of November 27, 2008. Series C No. 191, para. 110, and *Case of López Lone et al. v. Honduras. Preliminary objection, merits, reparations and costs.* Judgment of October 5, 2015. Series C No. 302, para. 288.

⁴² Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary objections.* Judgment of June 26, 1987. Series C No. 1, para. 96, and *Case of Quispialaya Vilcapoma v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 23, 2015, Series C No. 308, paras. 30 and 32.

56. The **State** indicated that it had formalized its adhesion to the American Convention on November 6, 1992, and accepted the jurisdiction of the Court on December 10, 1998, for facts subsequent to that date. The State asserted that the interpretation made by the Commission and the representatives regarding facts prior to Brazil's acceptance of the Court's jurisdiction violated the special regime of declarations limiting the Court's temporal jurisdiction established in Article 62(2) of the Convention, because it did not take into account the State's sovereignty and attempted to extend the Court's jurisdiction beyond the limits declared in that article. In the State's opinion, the proposed interpretation would equate the effects of all declarations accepting the Court's jurisdiction, whether or not they included a temporal limitation, and this would disregard the intentions of the States and the limits that they had legitimately imposed when submitting to the jurisdiction of the Court, unless the acts were continuing, which had not occurred in this case.

57. According to the State, the Court only has jurisdiction *ratione temporis* to analyze possible violations relating to facts identified in the 2000 inspection, because these are the only facts subsequent to December 10, 1998. It also argued that, with regard to possible violations of the rights to judicial protection and guarantees, the Court would only have jurisdiction in relation to the criminal proceedings initiated after that date that might constitute possible specific and autonomous violations concerning denial of justice.

58. Additionally, the State argued that the Court should declare itself incompetent to examine supposed violations that occurred before September 25, 1992, date on which the State had adhered to the American Convention; that is, acts that presumably violated the Convention and that took place between December 21, 1988, and March 18, 1992.

59. The **Commission** indicated that, when submitting the case to the Court, it had specified that it was only providing information on events that occurred or continued to occur after December 10, 1998, date on which Brazil had accepted the Court's jurisdiction. These consisted in acts and omissions with regard to the situation of forced labor, debt bondage and similar forms of slavery that, according to the Merits Report, were verified by the inspection that took place in 2000; as well as the acts and omissions that led to the impunity of all the facts, a situation that continued in force when the State accepted the Court's jurisdiction and thereafter, including the disappearance of Iron Canuto da Silva and Luis Ferreira da Cruz.

60. The **representatives** indicated that the State had interpreted the Court's case law erroneously and had disregarded its previous rulings in contentious cases against Brazil, because the Court had already stipulate that, when determining whether it had competence to examine a case or an aspect of a case, it had to consider the date of the State's acceptance of jurisdiction, as well as the terms on which that acceptance had been made. The representatives also argued that the Court had indicated that it had competence to analyze violations that, having initiated before the date on which its jurisdiction was accepted, might have continued or remained following such acceptance.

61. In addition, the representatives argued that the forced disappearance of Luis Ferreira da Cruz, occurred in August 1988, continued after December 10, 1998, and subsisted to this day, so that the State continued to incur international responsibility for failing to comply with its obligation to ensure rights by not taking effective steps to find the presumed victim.

62. The representatives also alleged violations arising from the failure to investigate slave labor and forced disappearances in Hacienda Brasil Verde prior to 1998. They indicated that the State was responsible for the failure to investigate the 1988 report of

slave labor and forced disappearances, reiterated in 1992, and also following the 1989, 1993 and 1996 inspections that revealed the existence of slave labor in the hacienda.

D.2. Considerations of the Court

63. Brazil accepted the contentious jurisdiction of the Inter-American Court on December 10, 1998, and, in its declaration, indicated that the Court would have jurisdiction with regard to “facts subsequent” to this acceptance.⁴³ Based on this and on the principle of non-retroactivity, the Court is unable to exercise its contentious jurisdiction in order to apply the Convention and declare a violation of its norms when the alleged facts or the conduct of the State that could entail its international responsibility occurred prior to this acceptance of jurisdiction.⁴⁴ Consequently, the facts that occurred before Brazil accepted the Court’s contentious jurisdiction fall outside its competence.

64. Nevertheless, in its consistent case law, the Court has established that acts of a continuing or permanent nature subsist throughout the time they persist, continuing the failure to conform to the international obligation. Accordingly, the Court recalls that the continuing or permanent nature of the forced disappearance of persons has been recognized repeatedly by international human rights law, under which the act of disappearance and its perpetration begins with the deprivation of the person’s liberty and the subsequent lack of information about their fate, and remains until the whereabouts of the disappeared person are known and the facts have been elucidated.⁴⁵ Therefore, the Court is competent to analyze the alleged forced disappearance of Luis Ferreira da Cruz and Iron Canuto da Silva following Brazil’s acceptance of its jurisdiction.

65. Furthermore, the Court can examine and rule on the other alleged violations that are based on facts that occurred after December 10, 1998. Consequently, the Court is competent to analyze the supposed acts and omissions of the State that occurred during the investigations and proceedings related to the 1997 inspection conducted in Hacienda Brasil Verde that took place after Brazil had accepted the Court’s contentious jurisdiction, and also the facts related to the 2000 inspection and the proceedings instituted after this. Based on the foregoing, the Court reaffirms its consistent case law on the matter and finds that the preliminary objection is partially justified.

E. Alleged lack of jurisdiction *ratione materiae* based on violation of the principle of the subsidiary nature of the inter-American system

E.1. Arguments of the State and observations of the Commission and of the representatives

66. The **State** indicated that the domestic judicial remedies were duly concluded by the competent authorities and that the representatives’ discrepancy with their conclusions was insufficient to justify recourse to the inter-American system. The State also asserted that it was only possible to resort to the inter-American system in the hypothesis that the

⁴³ Brazil’s acceptance of jurisdiction on December 10, 1998, indicated that “[t]he Government of the Federative Republic of Brazil declares its recognition as binding, for an indefinite period of time, *ipso jure*, of the jurisdiction of the Inter-American Court of Human Rights, on all matters relating to the interpretation or application of the American Convention on Human Rights, according to Article 62 of that Convention, on the condition of reciprocity and for matters arising after the time of this Declaration.” Cf. General information of the Treaty: American Convention on Human Rights. Brazil, acceptance of jurisdiction. Available at: https://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights_sign.htm.

⁴⁴ Cf. *Case of Gomes Lund et al. (“Guerrilha do Araguaia”) v. Brazil*. Preliminary objections, merits, reparations and costs. Judgment of November 24, 2010. Series C No. 219, para. 16.

⁴⁵ Cf. *Gomes Lund et al. (“Guerrilha do Araguaia”)*, para. 17.

exhaustion of the domestic remedy did not lead to a conclusive ruling by the competent authority on whether or not a presumed violation existed. It indicated that, if the Court assumed jurisdiction, it would be substituting the domestic authorities and acting as a kind of “domestic fourth instance court of appeal.” In addition, it affirmed that several domestic remedies to investigate supposed human rights violations perpetrated against Hacienda Brasil Verde workers had been filed at different times and duly processed, and that they had all been conducted and concluded by the competent authorities.

67. Lastly, the State indicated that the domestic courts had functioned appropriately to redress the pecuniary damage suffered by the Hacienda Brasil Verde workers, and asserted that the Court did not have competence to rule on the request for reparation for pecuniary damage.

68. The **Commission** indicated that it was for the Court, at the merits stage, to analyze whether the domestic proceedings had constituted an appropriate and effective means of achieving judicial protection in relation to the violated rights; thus, the State’s allegation could not be decided as a preliminary objection.

69. The **representatives** indicated that, for the preliminary objection of the fourth instance to be admissible, the victims’ representatives would have had to ask the Court to review the domestic judgments with regard to an incorrect evaluation of the evidence, the facts or domestic law only. They asserted that they had not asked the Court to review the rulings issued by the domestic courts; rather, they had questioned the rulings made by different State agents that had resulted in violations of the obligation to provide effective judicial protection and judicial guarantees, the lack of appropriate and effective measures to prevent the violation of the victims’ human rights, and the absence of comprehensive assistance for them, which constituted specific violations of the Convention.

70. Lastly, the representatives indicated that, in this case, the Court should analyze whether violations of judicial protection and guarantees of due process were effectively constituted, including an evaluation of the reasons for the delay in the investigation procedure and its eventual prescription, and this corresponded to the examination of the merits of the case.

E.2. Considerations of the Court

71. The Court has established that the international jurisdiction is of a subsidiary and complementary nature⁴⁶ and, therefore, it does not perform the functions of a court of “fourth instance.” Moreover, it is not a high court or court of appeal to decide any disagreements between the parties on elements concerning the evaluation of the evidence or the application of domestic law in relation to aspects that do not directly concern compliance with international human rights obligations.⁴⁷

⁴⁶ The Preamble to the American Convention states that the international protection should be considered as “reinforcing or complementing the protection provided by the domestic law of the American states.” See also, *The Effect of Reservations on the Entry into Force of the American Convention on Human Rights* (Arts. 74 and 75). Advisory Opinion OC-2/82 of September 24, 1982. Series A No. 2, para. 31; *The Word “Laws” in Article 30 of the American Convention on Human Rights*. Advisory Opinion OC-6/86 of May 9, 1986. Series A No. 6, para. 26; *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 61, and *Case of García Ibarra et al. v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of November 17, 2015, para.17.

⁴⁷ Cf. *Case of Cabrera García and Montiel Flores v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 26, 2010. Series C No. 220, para. 16, and *Case of García Ibarra et al.*, para. 17.

72. The Court recalls that, regardless of whether the State defines an assertion as a “preliminary objection,” if it is necessary to begin to consider the merits of the case when analyzing it, it is no longer preliminary in nature and cannot be analyzed as such.⁴⁸

73. This Court has established that, for the fourth instance objection to be admissible, “the petitioner must require the Court to review the ruling of a domestic court owing to an incorrect evaluation of the evidence, the facts or domestic law, without, at the same time, alleging that the said ruling incurred in a violation of international treaties regarding which the Court has competence.” In addition, the Court has established that, when assessing compliance with certain international obligations, an intrinsic interrelationship between the analysis of international law and domestic law may be noted. Consequently, determination of whether the actions of the State’s judicial organs constitute a violation of its international obligations may result in the Court having to examine the respective domestic proceedings to establish their compatibility with the American Convention.⁴⁹

74. In this case, neither the Commission nor the representatives have requested a review of domestic decisions in relation to the evaluation of evidence or facts, or the application of domestic law. The Court considers that the State’s arguments regarding whether the domestic judicial proceedings were appropriate and effective and whether the remedies were processed and decided correctly must be analyzed when examining the merits of the case pursuant to the American Convention and international law. In addition, whether the payment made to redress pecuniary damage was sufficient and whether acts and omissions existed that violated guarantees of access to justice and that could generate the State’s international responsibility must also be analyzed when examining the merits. Based on the foregoing, the Court rejects this preliminary objection.

F. Alleged lack of jurisdiction *ratione materiae* regarding presumed violations of the prohibition of trafficking in persons

F.1. Arguments of the State and observations of the Commission and of the representatives

75. The **State** asserted that neither the Commission nor the Court were competent to process individual petitions that alleged the supposed violation of international commitments assumed by Brazil to prohibit trafficking in persons, because the Court’s competence was limited to examining supposed violations of the prohibition of the slave trade and traffic in women established in Article 6 of the American Convention, and neither the Commission nor the representatives had alleged that this article had been violated in the instant case. Consequently, it considered that the Court did not have competence to analyze the supposed violation of the international commitments assumed by the State to prevent and combat trafficking in persons when examining the merits of the case.

76. The **Commission** indicated that it agreed with the State that the Court’s contentious jurisdiction was limited to the Convention and to the instruments of the inter-American sphere, but pointed out that this did not mean that it was impossible to characterize a specific human rights violation according to its definition in other international instruments, provided that the situation violated the Convention or other applicable inter-American instruments, as occurred, for example, in cases of genocide,

⁴⁸ Cf. *Case of Castañeda Gutman v. Mexico. Preliminary objections, merits, reparations and costs*. Judgment of August 6, 2008. Series C No. 184, para. 39, and *Case of García Ibarra et al.*, para. 17.

⁴⁹ *Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala. Merits*. Judgment of November 19, 1999. Series C No. 63, para. 222, and *Case of García Ibarra et al.*, paras. 19 and 20.

rape, and child recruitment, and including situations of trafficking in persons, which necessarily entailed violations of rights established in the Convention.

77. The **representatives** pointed to the Court's consistent criteria that, when examining the compatibility of State laws or conducts with the Convention, it could interpret the obligations and the rights contained in this instrument in light of other treaties. They also indicated that they had alleged specific violations owing to the State's omission of its obligation to ensure rights in relation to the prohibition of slavery, servitude and trafficking (Article 6 of the Convention), in relation to the rights to juridical personality, personal integrity, personal liberty, privacy, honor and dignity, freedom of movement and residence of the victims who were in Hacienda Brasil Verde after December 1998.

F.2. Considerations of the Court

78. It is important to note that, in this case, neither the Commission nor the representatives have asked the Court to declare the State responsible for possible violations of international commitments assumed by Brazil in relation to other international treaties.

79. Pursuant to Article 29(b) of the American Convention and the general rules for the interpretation of treaties included in the Vienna Convention on the Law of Treaties, the American Convention may be interpreted in relation to other international instruments.⁵⁰ Therefore, when examining the compatibility with the Convention of a State's laws or actions, the Court may interpret the obligations and the rights contained in that instrument in light of other treaties. This means that the Court may observe the rules of specific international norms relating to the prohibition of slavery, servitude and trafficking in persons, in order to apply the norms of the Convention more precisely when defining the scope of the State's obligations.⁵¹ Therefore, the State's allegation of lack of jurisdiction is groundless, because the interpretation of the scope of Article 6 of the Convention is not a matter for a preliminary objection, but corresponds to the examination of the merits of the case.

80. Based on the above, the Court rejects this preliminary objection.

G. Alleged lack of jurisdiction *ratione materiae* concerning supposed violations of labor rights

G.1. Arguments of the State and observations of the Commission and of the representatives

81. The **State** alleged that: (i) the Additional Protocol to the American Convention in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) indicated clearly that only trade union rights and the right to education were subject to the system of individual petitions regulated by the Convention, and (ii) the facts verified in Hacienda Brasil Verde related to situations of violation of the right to fair, equitable and satisfactory

⁵⁰ Cf. *Case of the Mayagna (Sumo) Awaj T'ingni Community v. Nicaragua. Merits, reparations and costs*. Judgment of August 31, 2001. Series C No. 79, para. 148, and *Case of Rodríguez Vera et al. (Disappeared from the Palace of Justice) v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of November 14, 2014. Series C No. 287, para. 39. In this regard, Article 31.3.c of the said Vienna Convention establishes as a rule of interpretation that: "[t]here shall be taken into account, together with the context: [...] c) any relevant rules of international law applicable in the relations between the parties."

⁵¹ Cf. *Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, merits and reparations*. Judgment of November 30, 2012. Series C No. 259, para. 24, and *Case of Rodríguez Vera et al. (Disappeared from the Palace of Justice)*, para. 39.

working conditions, which were regulated in Article 7 of the Protocol of San Salvador, and not in Article 6 of the American Convention. Accordingly, the State indicated that, since the facts of this case did not refer to aspects of trade union rights or education, the Court did not have competence to examine them.

82. The **Commission** indicated that the State's arguments were based on the fact that Article 6 of the Convention had not been violated, an aspect that related to the merits of the case. It also observed that, in several cases, the Court had established a connection between certain economic, social and cultural rights and those traditionally known as civil and political rights.

83. The **representatives** indicated that the State had acknowledged that, in certain circumstances, the Court had analyzed aspects relating to economic, social and cultural rights in order to better analyze the violations of Articles 4, 5 and 19 of the Convention. They also asked the Court to reject this preliminary objection because they had not claimed a specific violation of the Protocol of San Salvador.

G.2. Considerations of the Court

84. The Court considers that the possible violation of provisions of the Protocol of San Salvador is not in litigation. Also, whether or not Article 6 of the Convention has been violated corresponds to the examination of the merits and is not a matter for a preliminary objection. Consequently, the Court rejects this preliminary objection.

H. Alleged failure to exhaust domestic remedies

H.1. Arguments of the State and observations of the Commission and of the representatives

85. The **State** indicated that an opportunity must be provided to file the domestic remedies aimed at recognizing and redressing the harm caused to the victims. Consequently, the presumed victims or their representatives cannot seek international judicial protection directly without first having recourse to domestic law. Furthermore, the State alleged the existence of domestic remedies that were adequate for the protection of all the rights supposedly violated as well as to obtain all the reparations derived from such violations, and indicated that the representatives could have, and still could, use those domestic remedies, which they have not done to date.

86. The State also requested the Court to declare the case inadmissible with regard to the claims for reparation for pecuniary and non-pecuniary damage.

87. The **Commission** indicated that the requirement of exhaustion of domestic remedies established in Article 46(1) of the Convention was related to the alleged facts that violated human rights. The representatives' claim regarding the compensation ordered by the Court was subject to the declaration of the responsibility of the State concerned, and constituted an automatic consequence of such responsibility. The Convention did not establish which additional mechanisms had to be exhausted to enable the victims to obtain compensation. The Commission indicated that an obligation to exhaust the remedies, as proposed by the State, not only placed a disproportionate burden on the victims, but would also be contrary to the provisions of the Convention and the *raison d'être* of both the requirement to exhaust domestic remedies and the mechanism of compensation. It also indicated that the State's arguments were time-barred because the analysis of the exhaustion of domestic remedies corresponded to the admissibility stage of the case before the Commission.

88. The **representatives** indicated that the Court had maintained consistently that the proper procedural moment for the State to file a preliminary objection based on failure to exhaust domestic remedies was at the admissibility stage of the procedure before the Commission, prior to any consideration of the merits of the case. They also indicated that the Court had been consistent in indicating that the Commission had autonomy and independence when examining the petitions lodged before it, in exercise of its mandate under the Convention. While the Court had authority to control the legality of the Commission's actions, this did not necessarily involve a review of the procedure, except when grave errors existed that violated the parties' right to defend themselves. The representatives emphasized that, when submitting its answering brief to the Court, the State had not indicated the existence of a grave error or failure to comply with a procedural requirement that would have violated the State's right of defense. It had merely indicated its disagreement with the Commission's action, which led to the conclusion that it had not filed this objection appropriately, because that analysis should have taken place when the Commission was determining the admissibility of the case.

H.2. Considerations of the Court

89. The Court has developed clear standards to analyze an objection based on presumed non-compliance with the requirement of exhaustion of domestic remedies. First, the Court has interpreted the objection as a defense available to the State and, as such, it may be waived either expressly or tacitly. Second, this objection must be filed at the appropriate time so that the State may exercise its right of defense. Third, the Court has asserted that the State that files this objection must specify the domestic remedies that remain to be exhausted and demonstrate that such remedies are applicable and effective.⁵²

90. The Court has indicated that Article 46(1)(a) of the Convention establishes that, to determine the admissibility of a petition or communication lodged before the Commission, in accordance with Articles 44 or 45 of the Convention, it is necessary that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law.⁵³

91. Therefore, during the admissibility stage of the case before the Commission, the State should specify clearly the remedies that, in its opinion, have not yet been exhausted in order to safeguard the principle of procedural equality between the parties that should govern any proceeding before the inter-American system.⁵⁴ As the Court has established repeatedly, it is not the task of either the Court or the Commission to identify *ex officio* the domestic remedies that remain to be exhausted, because it is not incumbent on the international organs to rectify the lack of precision of the State's arguments.⁵⁵ Furthermore,

⁵² Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary objections*, para. 88, and *Case of Herrera Espinoza et al. v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of September 1, 2016. Series C No. 316, paras. 25 and 26.

⁵³ Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary objections*, para. 85, and *Case of Herrera Espinoza et al.*, para. 24.

⁵⁴ Cf. *Case of Gonzales Lluy et al. v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of September 1, 2015. Series C No. 298, para. 28, and *Case of Chinchilla Sandoval v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of February 29, 2016. Series C No. 312, para. 21.

⁵⁵ Cf. *Case of Reverón Trujillo v. Venezuela. Preliminary objection, merits, reparations and costs*. Judgment of June 30, 2009. Series C No. 197, para. 23, and *Case of Tenorio Roca et al. v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of June 22, 2016. Series C No. 314, para. 21.

the arguments that give content to the preliminary objection filed by the State before the Commission at the admissibility stage should correspond to those submitted to the Court.⁵⁶

92. Irrespective of the State's arguments before the Court with regard to the preliminary objection concerning failure to exhaust domestic remedies, the Court agrees with the Commission's observations, because it notes that, when answering the petition before the Commission, the only mention made by the State of the exhaustion of domestic remedies was that "the delay in the criminal action was justified by the complexity of the case and the changes in the jurisprudence in proceedings relating to subjection to conditions similar to slavery." The State had presented no further arguments in this regard subsequently.

93. The Court considers that the mention made by the State before the Commission does not comply with the requirements of a preliminary objection of failure to exhaust domestic remedies (*supra*, para. 89). This is because the State did not specify the domestic remedies that were pending exhaustion or that were underway, or the reasons why it considered that they were appropriate and effective. Therefore, the Court considers the preliminary objection inadmissible.

I. Alleged prescription of the claim for reparation for pecuniary and non-pecuniary damage before the Commission

I.1. Arguments of the State and observations of the Commission and of the representatives

94. The **State** alleged that, if the Court should consider that Brazil did not have appropriate domestic remedies to provide reparation for pecuniary and non-pecuniary damage, it would have to recognize that those claims had prescribed with regard to any possible violations that occurred in 1988, 1992, 1996 and 1997. The claim for reparation of pecuniary and non-pecuniary damage in relation to presumed violations that took place in Hacienda Brasil Verde in 1989 was made before the Commission 10 years after the facts occurred; that of 1992, 5 years and 8 months later, and that of 1996, 2 years later. In the case of the facts that occurred in 1997, the pecuniary claims were made before the Commission one year and four months after this. Consequently, it should be considered that the claims for pecuniary reparation for those presumed violations had prescribed, because the six-month statute of limitations had already expired when the case was lodged before the Commission.

95. The **Commission** indicated that the State had based its arguments on the premise that specific domestic remedies relating to compensation had to be exhausted if the objective was to obtain reparation in the international sphere. According to the Commission, it was not necessary to exhaust independent remedies in order to obtain reparation, especially if other mechanisms had been exhausted; thus, the objection should be considered inadmissible.

96. Regarding the prescription of the possibility of requiring a criminal investigation, the Commission reiterated that the State had been aware of the situation in Hacienda Brasil Verde, and had failed to conduct a criminal investigation that could be considered effective. In addition, it considered that the analysis of the opportune submission of the petition should be made based on the case as a whole rather than on isolated facts.

⁵⁶ Cf. *Case of Furlan and family v. Argentina. Preliminary objections, merits, reparations and costs*. Judgment of August 31, 2012. Series C No. 246, para. 29, and *Case of Herrera Espinoza et al.*, para. 28.

97. The **representatives** indicated that the State's argument was groundless and, therefore, the objection should be withdrawn, because the State did not file it at the proper procedural moment and had based its arguments on the failure to exhaust domestic remedies.

I.2. Considerations of the Court

98. The State did not file this preliminary objection during the processing of the admissibility of the petition before the Commission. Thus, it is time-barred because it was not filed at the proper procedural moment. Accordingly, the Court rejects the preliminary objection.

V EVIDENCE

A. Documentary, testimonial and expert evidence

99. The Court received different documents presented as evidence by the Commission and the parties attached to their principal briefs (*supra* paras. 3, 6 and 7). The Court also received affidavits prepared by 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. Regarding the evidence provided during the public hearing, the Court received the testimony of Leonardo Sakamoto and Ana Paula de Souza, and the expert opinions of César Rodríguez Garavito, Raquel Dodge, Ana Carolina Alves Araujo Román and Jean Allain.

101. In addition, during the on-site procedure, the Court heard the statements of Marcos Antônio Lima, Francisco Fabiano Leandro, Rogerio Felix Silva, Francisco das Chagas Bastos Sousa and Antônio Francisco da Silva, in their capacity as presumed victims. It also heard the statements of André Esposito Roston, Silvio Silva Brazil, Lélío Bentes, Oswaldo José Barbosa Silva and Christiane Vieira Nogueira, as deponents for information purposes.

B. Admission of the evidence

102. This Court admits the documents presented at the appropriate procedural opportunity by the parties and the Commission the admissibility of which was not contested or challenged.⁵⁷

103. Regarding some documents indicated by means of electronic links, the Court has established that, if a party or the Commission provides at least the direct electronic link to the document that it cites as evidence and it is possible to access it, neither legal certainty nor procedural balance is affected because it can be located immediately by the Court and by the other parties.⁵⁸ Consequently, the Court finds it pertinent to admit the documents that were indicated by means of electronic links in the instant case.

104. With regard to the affidavits, the Court notes that, despite having been offered at the proper opportunity and requested in the order of the President of December 11, 2015,

⁵⁷ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, para. 140, and *Case of Herrera Espinoza et al.*, para. 44.

⁵⁸ Cf. *Case of Escué Zapata v. Colombia. Merits, reparations and costs*. Judgment of July 4, 2007. Series C No. 165, para. 26, and *Case of Herrera Espinoza et al.*, para. 45.

(*supra* para. 9), the representatives did not provide an affidavit from José Batista Gonçalves Afonso, and the State did not provide one from Dasalete Canuto Watanabe.

105. In addition, the Court deems it pertinent to declare the affidavit prepared by María Gorete Canuto inadmissible, because the State did not offer this at the proper procedural moment and it was not requested in the President's order of December 11, 2015, or in the order of the Court of February 15, 2016.

106. Furthermore, the representatives alleged that the statement made by Maria do Socorro Canuto before the Federal Police was false because, in their opinion, it contained contradictions and inconsistencies; they therefore asked the Court to reject it. The Court considers that these observations refer to the content and evidentiary value of the testimony rather than an objection to the admission of this evidence.⁵⁹ Additionally, the representatives' objection concerning the falsity of the statement is a matter for the domestic jurisdiction. Moreover, it is not admissible to exclude evidence based on its inconsistency with the version of the facts asserted by one of the parties, because this would imply assuming that the latter was true before the corresponding assessment had been made.⁶⁰ Consequently, the Court finds it pertinent to admit Maria do Socorro Canuto's statement and to consider it in the context of the whole body of evidence.

C. Assessment of the evidence

107. Based on the provisions of Articles 46, 47, 48, 50, 51, 57 and 58 of the Rules of Procedure, as well as on its consistent case law regarding evidence and its evaluation, the Court will examine and assess the documentary probative elements forwarded by the parties and the Commission, together with the statements, testimony and expert opinions, when establishing the facts of the case and ruling on the merits. To this end, it will abide by the principles of sound judgment, within the corresponding legal framework, taking into account the entire body of evidence and the arguments made during the proceedings.⁶¹ Also, pursuant to the Court's case law, the statements made by the presumed victims cannot be assessed on their own, but rather together with all the evidence in the proceedings, insofar as they may provide further information on the presumed violations and the consequences.⁶²

VI FACTS

108. In this chapter the Court will describe the context of the case and the specific facts that fall within its temporal jurisdiction.

109. The facts prior to the date of ratification of the Court's contentious jurisdiction by Brazil (December 10, 1998) will only be mentioned as part of the context and background to the case.

A. Context

A.1. History of slave labor in Brazil

⁵⁹ *Cf. Case of Maldonado Ordoñez*, para. 29.

⁶⁰ *Cf. Case of Quispialaya Vilcapoma*, para. 40.

⁶¹ *Cf. Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits*. Judgment of March 8, 1998. Series C No. 37, para. 76, and *Case of Tenorio Roca*, para. 45.

⁶² *Cf. Case of Loayza Tamayo v. Peru. Merits*. Judgment of September 17, 1997. Series C No. 33, para. 43, and *Case of Tenorio Roca*, para. 46.

110. Historically, in Brazil, the slave trade has been linked to forced labor and the Portuguese colonization. By the mid-eighteenth century, around 40% of the slave population in Brazil was involved in sugar cane farming. In 1850, the transnational slave trade was abolished and this gave strength to the movement that sought to abolish slavery. Subsequently, in 1888, slavery was legally abolished in Brazil.

111. Despite the legal abolition, poverty and the concentration of land ownership were some of the structural causes that led to the continuation of slave labor in Brazil.⁶³ Since they had neither land of their own nor a stable work situation, many workers in Brazil “submit[ted] to exploitation, accepting the risk of falling into situations of inhuman and degrading working conditions. [...] Slave labor intensified in Brazil in the 1960s and 1970s owing to the expansion of modern farming techniques that required the recruitment of more labourers.”⁶⁴ By the middle of the twentieth century, the industrialization of the Amazon region had intensified,⁶⁵ and the phenomenon of illegal ownership and uncontrolled adjudication of public lands was rife; this led to the consolidation of practices of slave labor in the haciendas of private or family firms that owned large tracts of land.⁶⁶ In this context there was an absence of state control in the northern part of Brazil where some regional authorities had become allies of the landowners.⁶⁷ By 1995, the State had begun to acknowledge officially the existence of slave labor in Brazil.⁶⁸ According to the ILO, in 2010, “12.3 million people across the world were trapped in situations of forced labor,” and 25,000 of them were in Brazil.⁶⁹

A.2. Characteristics of slave labor in Brazil

112. Most victims of slave labor in Brazil are workers from the north and northwest of the country, from states characterized by extreme poverty, with the highest levels of illiteracy and rural unemployment, including Maranhão, Piauí and Tocantins.⁷⁰ Workers from these state migrate to states with the greatest demand for slave labor: Pará, Mato Grosso, Maranhão and Tocantins.⁷¹ The main activities employing slave labor are cattle ranching, large-scale agricultural production, deforestation and forestry, and charcoal.⁷²

⁶³ Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian. Mission to Brazil, August 30, 2010, para. 23 (evidence file, folio 163).

⁶⁴ Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian. Mission to Brazil, August 30, 2010, paras. 24 and 25 (evidence file, folio 163).

⁶⁵ International Labour Organization (ILO). Fighting forced labour: the example of Brazil. Brasilia, 2010, p. 38 (evidence file, folio 364).

⁶⁶ International Labour Organization (ILO). Fighting forced labour: the example of Brazil. Brasilia, 2010, p. 39 (evidence file, folio 366).

⁶⁷ International Labour Organization (ILO). Fighting forced labour: the example of Brazil. Brasilia, 2010, p.40 (evidence file, folio 366).

⁶⁸ Ministry of Labor and Employment of Brazil. Manual to combat work in conditions similar to those of slavery. November 2011 (evidence file, folio 9991), and International Labour Organization (ILO). Fighting forced labour: the example of Brazil. Brasilia, 2010, p. 31 (evidence file, folio 334).

⁶⁹ International Labour Organization (ILO). Fighting forced labour: the example of Brazil. Brasilia, 2010, p. 2 (evidence file, folio 359).

⁷⁰ Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian. Mission to Brazil, August 30, 2010, para. 28 (evidence file, folio 163).

⁷¹ Written expert opinion of Raquel Elias Ferreira Dodge of February 18, 2016 (evidence file folio 15365). Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian. Mission to Brazil, August 30, 2010, para. 28 (evidence file, folio 163).

⁷² Written expert opinion of Raquel Elias Ferreira Dodge of February 18, 2016 (evidence file folio 15365).

113. The workers, mostly poor “afro-descendent or mulatto” men,⁷³ aged between 15 and 40,⁷⁴ are recruited by the “*gatos*”⁷⁵ in their states of origin to work in distant states, with the promise of attractive salaries.⁷⁶ When they arrive at the haciendas, the workers are told that they are in debt to those who hired them for their transport, food and accommodation. The promised salaries are reduced and do not cover the costs already assumed. In some cases, the workers become increasingly indebted since they have to buy everything they need at inflated prices from the hacienda shop. Their debts increase to such an extent that they can never be paid off and they are thus forced to continue working.⁷⁷

114. Workers are often supervised by armed guards who do not allow them to leave the haciendas. If they do try to escape, they are usually hunted down and beaten.⁷⁸ Furthermore, the geographical location of the haciendas may, of itself, limit the liberty of the workers, because access to urban centers is often impossible owing, not only to the distance, but also to the poor conditions of access roads.⁷⁹ Some workers endure physical, sexual and verbal abuse, in addition to working in dangerous, unhygienic and degrading conditions.⁸⁰ Owing to their extreme poverty, their situation of vulnerability and their desperation to work, workers often accept such conditions.⁸¹

115. Regarding the investigations into these facts, according to the ILO, the roots of the situation of impunity for the use of slave labor lie in the links between landowners and the federal, state and municipal authorities in Brazil. Many landowners exercise power and influence within various national bodies, either directly or indirectly.⁸²

⁷³ Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian. Mission to Brazil, August 30, 2010, para. 29 (evidence file, folio 163).

⁷⁴ Testimony of Leonardo Sakamoto at the public hearing. Written expert opinion of Raquel Elias Ferreira Dodge of February 18, 2016 (evidence file folio 15368). Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian. Mission to Brazil, August 30, 2010, paras. 15 to 40 (evidence file, folio 163).

⁷⁵ This is the word used for the individuals who contact, recruit, transfer and, in some cases also, supervise the workers from their states of origin to the haciendas. See, among others, the testimony before the Court of Leonardo Sakamoto, Ana Paula de Sousa and Raquel Dodge.

⁷⁶ Ministry of Labor and Employment of Brazil. Manual to combat work in conditions similar to those of slavery. November 2011 (evidence file, folio 10003). Written expert opinion of Raquel Elias Ferreira Dodge of February 18, 2016 (evidence file folio 15366). Testimony of Ana Paula de Souza at the public hearing. Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian. Mission to Brazil, August 30, 2010, para. 31 (evidence file, folio 164).

⁷⁷ Ministry of Labor and Employment of Brazil. Manual to combat work in conditions similar to those of slavery. November 2011 (evidence file, folios 10006 and 10007). Testimony of Ana Paula de Souza at the public hearing Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian. Mission to Brazil, August 30, 2010, para. 31 (evidence file, folio 164).

⁷⁸ Ministry of Labor and Employment of Brazil. Manual to combat work in conditions similar to those of slavery. November 2011 (evidence file, folio 10004). Testimony of Ana Paula de Souza at the public hearing Written expert opinion of Raquel Elias Ferreira Dodge of February 18, 2016 (evidence file folio 15368). Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian. Mission to Brazil, August 30, 2010, para. 32 (evidence file, folio 164).

⁷⁹ Ministry of Labor and Employment of Brazil. Manual to combat work in conditions similar to those of slavery. November 2011 (evidence file, folio 10005).

⁸⁰ Ministry of Labor and Employment of Brazil. Manual to combat work in conditions similar to those of slavery. November 2011 (evidence file, folio 10004). Written expert opinion of Raquel Elias Ferreira Dodge of February 18, 2016 (evidence file folios 15372 and 15373). Testimony of Ana Paula de Souza at the public hearing. Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian. Mission to Brazil, August 30, 2010, para. 33 (evidence file, folio 164).

⁸¹ Testimony of Leonardo Sakamoto at the public hearing Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian. Mission to Brazil, August 30, 2010, para. 35 (evidence file, folio 164).

⁸² Testimony of Leonardo Sakamoto at the public hearing. International Labour Organization (ILO). Fighting forced labour: the example of Brazil. Brasília, 2010, p. 42 (evidence file, folio 371).

A.3. Measures adopted by the State

116. In 1995, the Brazilian State acknowledged the existence of slave labor and began to take measures to combat it.⁸³

117. To this end, among other measures, it issued Decree No. 1,538 creating the Interministerial Group for the Eradication of Forced Labor (GERTRAF), composed of various ministries and coordinated by the Ministry of Labor, with the participation of several agencies, institutions and the International Labour Organization (ILO). The Special Mobile Inspection Group was also established with authority to act in rural areas and to investigate reports of slave labor, supporting the operations of the Interministerial Group for the Eradication of Forced Labor.⁸⁴

118. In 2002, together with the ILO, the State implemented the technical cooperation project "Combating slave labor in Brazil."⁸⁵ It created the National Coordinator for the Eradication of Slave Labor⁸⁶ and launched the First National Plan for the Eradication of Slavery in Brazil.⁸⁷ In addition, it enacted Law No. 10608/2002, on unemployment insurance for workers rescued from the forced labor regime or from a condition similar to slavery.⁸⁸

119. In 2003, Law No. 10803/2003 was enacted amending the wording of article 149 of the Brazilian Penal Code. It defined the concept of contemporary slave labor, including the conducts of debt bondage, and slavery due to exhausting working hours and degrading working conditions.⁸⁹ It issued Ordinances No. 540 of October 15, 2004, and No. 2 of May 12, 2011, creating the List of Offending Employers (known as the "*Lista Suja*" or Dirty List) that contains the names of those known to exploit labor under conditions analogous to slavery, and which could be consulted by financial institutions when credits were

⁸³ Ministry of Labor and Employment of Brazil. Manual to combat work in conditions similar to those of slavery. November 2011 (evidence file, folio 9991). See, *inter alia*, Declaration of the President of the Republic, Fernando Henrique Cardoso, of June 27, 1995: "There are still Brazilians who work without freedom. But, in former times, slaves had an owner. The slaves of modern Brazil change owners and never know what is awaiting them the following day. [...] Slave labor is work that deprives workers of freedom of movement. This occurs, mainly, in the southern part of Pará. More than 80% of the complaints that reach the Ministry of Labor are from Pará. For example, in haciendas that carry out deforestation, the slave worker is supervised 24 hours a day, by well-armed gunmen. [...] his debt increases, he receives nothing at the end of the month and is obliged to continue working to pay off his debt [...]. Today, I am signing a decree to create an executive group for the elimination of forced labor [...] The first task will be to define sanctions that are truly rigorous for those persons who convert Brazilians into slaves. [...] In Brazil, the problem of slave labor and of degrading work is very, but very serious. Fortunately, the Government is not alone in taking action to combat it. Several civil society organizations, such as the *Comisión Pastoral de la Tierra*, are also acting. The problem must be addressed in this way: combining efforts and setting aside political or religious interests [...] I call out to those Brazilians who are enslaved and to their families: denounce this situation! [...] We need to make a national effort to comply with the *Lei Aurea* [Note: the 1888 Golden Law that abolished slavery in Brazil] (evidence file, folio 7108).

⁸⁴ Testimony provided by affidavit of José Armando Fraga Diniz Guerra on January 28, 2016 (evidence file, folio 13314).

⁸⁵ International Labour Organization (ILO). Fighting forced labour: the example of Brazil. Brasilia, 2010, p. 1 (evidence file, folio 427).

⁸⁶ Testimony provided by affidavit by Jonas Ratier Moreno on January 29, 2016 (evidence file, folio 13327).

⁸⁷ Ministry of Labor and Employment of Brazil. Slave labor in Brazil in retrospective: research references. January 2012 (evidence file, folio 9958). International Labour Organization (ILO). Fighting forced labour: the example of Brazil. Brasilia, 2010, p. 126 (evidence file, folio 427).

⁸⁸ Testimony provided by affidavit by Jonas Ratier Moreno on January 29, 2016 (evidence file, folio 13327).

⁸⁹ Testimony provided by affidavit by Jonas Ratier Moreno on January 29, 2016 (evidence file, folio 13327).

requested.⁹⁰ Also, on July 31, 2003, it established the National Commission for the Eradication of Slave Labor (CONATRAE), which substituted the Interministerial Group for the Eradication of Forced Labor set up in 1995. The Commission incorporated a greater number of institutions of the Brazilian State and members of civil society in order to develop public policies to combat slave labor.

120. In December 2007, in Special Appeal No. 398041, the Brazilian Supreme Federal Court established a definitive opinion that the federal jurisdiction was the competent instance of the Judiciary to try crimes relating to conditions analogous to slavery established in article 149 of the Brazilian Penal Code.

121. In 2008, the Second National Plan for the Eradication of Slavery was implemented.⁹¹ In 2009, Law No. 12064/2009 was enacted creating the National Day of the Combat against Slave Labor. On June 22, 2010, the Central Bank of Brazil issued resolution No. 3876 prohibiting the granting of rural credits to physical and legal persons registered on the Offending Employers List (the “dirty list”) that kept workers in conditions analogous to slavery.⁹² On June 5, 2014, constitutional amendment No. 81 was published, and its article 243 determined that urban and rural properties in any region of the country where slave labor, among other problems, was found would be expropriated.⁹³

122. In addition, the Brazilian State has established courses, coordinated by CONATRAE, to raise awareness of the issue among labor judges and federal judges and to provide them with the required training.⁹⁴

A.4. Applicable domestic laws

123. In 1943, the Consolidated Labor Laws were enacted⁹⁵ and, in 1973, the Rural Worker’s Statute.⁹⁶ These laws did not include an express prohibition of slave labor, but established labor offenses that corresponded to conducts that constituted slave labor.

124. Article 7 of the 1988 Brazilian Constitution sets out the rights of urban and rural workers.⁹⁷ Article 149 of the 1940 Brazilian Penal Code defined, for the first time, in general terms, the conduct of reducing a person to conditions similar to slavery as follows:

“To reduce someone to conditions analogous to those of a slave: 2 to 8 years’ imprisonment.”⁹⁸

⁹⁰ Testimony of Leonardo Sakamoto at the public hearing. International Labour Organization (ILO). Fighting forced labour: the example of Brazil. Brasilia, 2010, p. 3 (evidence file, folio 447). The publication of the “dirty list” was suspended on December 23, 2015, as a result of the ruling on direct action for unconstitutionality No. 5,209 (evidence file, folio 7301). It was subsequently reinstated by Interministerial Decision No. 2 of March 31, 2015 (evidence file, folio 7409). Testimony provided by affidavit by Jonas Ratier Moreno on January 29, 2016 (evidence file, folio 13328).

⁹¹ Second National Plan for the Eradication of Slavery (evidence file, folio 7189). Ministry of Labor and Employment of Brazil. Slave labor in Brazil in retrospective: research references. January 2012 (evidence file, folio 9961). Testimony provided by affidavit by Jonas Ratier Moreno on January 29, 2016 (evidence file, folio 13329).

⁹² Testimony provided by affidavit by Michael Freitas Mohallem on February 4, 2016 (evidence file, folio 14089).

⁹³ Testimony provided by affidavit by Jonas Ratier Moreno on January 29, 2016 (evidence file, folio 13329).

⁹⁴ International Labour Organization (ILO). Fighting forced labour: the example of Brazil. Brasilia, 2010, p. 100 (evidence file, folio 446).

⁹⁵ Decree Law No. 5,452 of May 1, 1943 (evidence file, folio 6188).

⁹⁶ Law No. 5,889 of June 8, 1973 (evidence file, folio 6316).

⁹⁷ Article 7 of the 1988 Constitution of the Federative Republic of Brazil.

⁹⁸ Article 149 of the 1940 Brazilian Penal Code.

125. Also, article 197 of the Brazilian Penal Code established the offense of “violation of freedom of work”⁹⁹; and article 207 defined the offense of “unlawful recruitment of workers from one part of national territory to another.”¹⁰⁰ At the time of the facts of this case, these were the applicable laws.

126. In 1994, the first Administrative Instruction was enacted establishing the appropriate procedure for conducting inspections of work in rural contexts and providing guidelines on the procedure to be adopted in cases of forced labor and other situations that jeopardized the life or health of workers.¹⁰¹ The norm was amended in 2006 and 2009.¹⁰²

127. Law No. 10,803 of 2003 amended article 149 of the Brazilian Penal Code, and defined as an offense any conduct that reduced a person to conditions analogous to slavery as follows:

Art. 149. To reduce someone to a condition analogous to that of a slave, or to subject that person to forced labor or to arduous working days, or to subject them to degrading working conditions, or to restrict, in any manner whatsoever, their mobility by reason of a debt contracted in respect of the employer or a representative of that employer.

Penalty – two to eight years’ imprisonment and a fine, in addition to the penalty corresponding to violence.

1. The same penalty is applicable to those who:

I. prevent employees from using any means of transportation in order to retain them at the place of work.

II. maintain constant surveillance in the place of work, or appropriate workers’ personal papers or property in order to retain them at the place of work.

2. The penalty shall be increased by half if the offense is committed:

I. against a child or adolescent;

II. based on race, color, ethnicity, religion or origin.

A.5. Background information

Hacienda Brasil Verde

128. Hacienda Brasil Verde is located in the municipality of Sapucaia, in the south of the state of Pará, Federative Republic of Brazil.¹⁰³ The total area of the hacienda is 1,780

⁹⁹ Article 197 of the 1940 Brazilian Penal Code: To force someone by violence or serious threat: I. to execute or not to execute a job, profession or trade, or to work or not to work during a certain period or on certain days: Penalty – one month to one year’s imprisonment and a fine, in addition to the penalty corresponding to violence; II. to open or close their place of work or to take part in a stoppage of the economic activity: Penalty - three months to one year’s imprisonment and a fine, in addition to the penalty corresponding to violence.

¹⁰⁰ Article 207 of the Brazilian Penal Code: To attract workers from one part of national territory to another. To recruit workers, in order to take them from one part of national territory to another: Penalty – one to three years’ imprisonment and a fine. § 1. The same penalty shall be applied to the person who recruits workers to work in another part of national territory by fraud or by charging the worker any amount, or even by failing to guarantee the conditions for his return to his place of origin. § 2. The penalty shall be increased by a sixth to a third part if the victims is under 18 years of age, elderly, a pregnant women, indigenous, or physically or mentally disabled.

¹⁰¹ Interministerial Normative Instruction No. 1 of March 24, 1994 (evidence file, folio 6427).

¹⁰² Interministerial Normative Instruction No. 65 of July 31, 2006 (evidence file, folio 6432).

¹⁰³ Communication, Pará Regional Superintendence, Federal Police (evidence file, folio 550).

alqueires (8,544 hectares), and it is dedicated to cattle ranching.¹⁰⁴ At the time of the facts, the owner of Hacienda Brasil Verde was João Luis Quagliato Neto.¹⁰⁵

The reports filed in December 1988 and January 1989

129. On December 21, 1988, the *Comissão Pastoral da Terra* and the diocese of Conceição de Araguaia, together with José Teodoro da Silva and Miguel Ferreira da Cruz, respectively father and brother of Iron Canuto da Silva, aged 17, and Luis Ferreira da Cruz, aged 16, filed a report before the Federal Police concerning the practice of slave labor in Hacienda Brasil Verde, and the disappearance of the two young men.¹⁰⁶

130. According to this report, in August 1988, Iron Canuto and Luis Ferreira da Cruz had been taken from Arapoema by a *gato* to work in Hacienda Brasil Verde for 60 days. The report also indicated that, when they tried to leave the hacienda, the adolescents had been forcibly returned, threatened and, subsequently, had disappeared. Therefore, the family was concerned about them.¹⁰⁷

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

I worked in the hacienda for 30 days; the [*gato*] promised me many things there and I took with me all the tools for the work. When we arrived, his promises turned out to be false. [I was] clearing "juquirá,"¹⁰⁸ living in a tent full of water; my wife had recently been operated on, my children became ill, it was really bad. I needed to buy two bottles of medicine and [they charged] me Cz\$3,000,00. When I left the hacienda, I went to pay the bill and I owed Cz\$21,500 and had to sell a hammock, a blanket, two machetes, two pots, plates, two spoons and I still owed Cz\$16,800 and I left owing this.

[...] During all this time, I was not paid any money.

[...] When I wanted to leave, he did not place any conditions; I spent the whole morning in the rain, because the manager, Nelson, left us by the roadside in the rain, with [my] wife and children ill.

In the hacienda we were very hungry, and the workers lived in very degrading conditions. I often saw him promising to shoot the workers. And the situation continues; the workers want to leave peacefully; they need to go. Recently seven of them escaped, but without money.¹⁰⁹

132. On December 27, 1988, Maria Madalena Vindoura dos Santos, a resident of Arapoema, reported a similar situation involving her husband, José Soriano da Costa.¹¹⁰

133. On January 25, 1989, the *Comissão Pastoral da Terra* sent a letter to the Office of the Ombudsman in Brasília, forwarding reports of slave labor in Haciendas Brasil Verde and Belauto. The *Comissão* indicated that it had already filed a report concerning Hacienda Brasil Verde on December 21, 1988, and suggested that the need to inspect the two haciendas had increased, because it was not the first time they were reported for practicing slave labor.¹¹¹

¹⁰⁴ Inspection order (evidence file, folio 548).

¹⁰⁵ Mission order 018/89 (evidence file, folio 554).

¹⁰⁶ Report filed with the Federal Police on December 21, 1988 (evidence file, folio 7428).

¹⁰⁷ Report filed with the Federal Police on December 21, 1988 (evidence file, folio 7428).

¹⁰⁸ Dense vegetation that grows on the cropland and must be cleared before planting a new crop.

¹⁰⁹ Statement by Adailton Martins dos Reis of December 21, 1988 (evidence file, folio 558).

¹¹⁰ Statement by Maria Madalena Vindoura dos Santos of December 27, 1988 (evidence file, folio 7432).

¹¹¹ Report of January 25, 1989, filed with the Office of the Ombudsman in Brasília (evidence file, folio 7434).

The 1989 visit to Hacienda Brasil Verde

134. On February 20, 1989, the Federal Police visited Hacienda Brasil Verde.¹¹² The February 24 report on the visit indicated that: (i) the recruitment of workers for the hacienda was consistently carried out by *gatos*; (ii) four *gatos* who worked in the hacienda had been identified; (iii) one of the *gatos* had fled on becoming aware that the Federal Police were in the area and it had not been possible to find another; (iv) the workers indicated that they wanted a better salary, but they had accepted the work because they had not found any other work that paid more. The workers indicated that they were free to leave the hacienda.¹¹³

135. The report indicated that no signs of slave labor had been observed in Hacienda Brasil Verde, but it corroborated the existence of low wages and labor law violations, following interviews with 51 workers. The report also underlined that the workers had advised that Iron Canuto and Luis Ferreira da Cruz had escaped from Hacienda Belém and indicated that it was normal that workers would flee owing to the debts they contracted in Hacienda Brasil Verde.¹¹⁴ There is no record in the file that a list was drawn up with the names of the workers who were on the property at the time of the visit.

The report and actions in 1992

136. On March 18, 1992, the *Comissão Pastoral da Terra* sent a letter to the Prosecutor General of the Republic (hereinafter "the Prosecutor General"), forwarding him the reports filed before the Federal Police in December 1988 and before the Ombudsman's Office in January 1989 concerning slave labor in Hacienda Brasil Verde, and the disappearance of Iron Canuto and Luis Ferreira da Cruz.¹¹⁵

137. This report was acknowledged officially on April 22, 1992, and the Prosecutor General opened an administrative proceeding.¹¹⁶ On June 4, 1992, he requested the Federal Police Department to provide relevant information¹¹⁷ and on September 22 that year he repeated this request.¹¹⁸ On December 7, 1992, the Central Coordination Department of the Federal Police answered the request and provided information on the procedures conducted in Hacienda Brasil Verde in 1989.¹¹⁹ The Federal Police Department advised that it had not verified the presence of slave labor and that the investigation was being supervised by the Superintendence of the state of Pará, with nothing new of any significance at that time to report.¹²⁰

The visit to Hacienda Brasil Verde and the actions taken in 1993

¹¹² Mission order No. 018/89 of February 9, 1989 (evidence file, folio 7436).

¹¹³ Federal Police Agent's report of February 24, 1989 (evidence file, folio 7439).

¹¹⁴ Federal Police Agent's report of February 24, 1989 (evidence file, folio 7439).

¹¹⁵ Communication sent to the Assistant Prosecutor General of the Republic dated March 18, 1992 (evidence file, folio 7471).

¹¹⁶ Communication No. 706 of the Prosecutor General of the Republic of June 4, 1992 (evidence file, folio 7473).

¹¹⁷ Communication No. 707 of the Prosecutor General of the Republic of June 4, 1992 (evidence file, folio 7474).

¹¹⁸ Communication No. 1556 of the Prosecutor General of the Republic of September 22, 1992 (evidence file, folio 7476).

¹¹⁹ Communication No. 096/92 of the Central Coordination Department of the Federal Police of December 7, 1992 (evidence file, folio 7478).

¹²⁰ Communication No. 096/92 of the Central Coordination Department of the Federal Police of December 7, 1992 (evidence file, folio 7479).

138. On August 2, 1993, the Regional Labor Delegation (hereinafter "the DRT") of the state of Pará advised the Prosecutor General that, between June 26 and July 3, 1993, it had conducted inspection visits to several haciendas, including Hacienda Brasil Verde, with four federal police agents.¹²¹ The DRT indicated that the practice of slavery had not been identified, but 49 workers had been found without their work records or work permits (CTPs). It also indicated that, during the procedure, it had ordered the return to their place of origin of several workers who had been hired irregularly and who had indicated their wish to leave the hacienda.¹²² There was no record of the names of the workers who did not have their work permits, or of those who were sent back to their place of origin.

Actions in 1994

139. On April 25, 1994, the Assistant Prosecutor General of the Republic sent a letter to the *Comissão Pastoral da Terra* attaching a report dated March 29, 1994, on the visits made to Hacienda Brasil Verde in 1989 and 1993.¹²³

140. The report indicated that the actions of the Federal Police during the 1989 visit to Hacienda Brasil Verde had been insufficient because they had not taken note of the statements made by the workers and had failed to draw up a list with their name and personal details. Furthermore, they had not taken a statement from the manager of the hacienda, and had not asked to see the work contracts. In addition, they had taken no steps to look for the adolescents who had disappeared, and had not searched for weapons in the hacienda or verified the prices of the products in the store.¹²⁴

141. The report added that the failure to pay wages, the flight of the *gato* while the visit was underway, and the dispute regarding the escape or abandonment of their work by the workers justified the opening of a police investigation into a possible unlawful labor practice and reduction to a condition similar to that of slavery. Nevertheless, it underscored that most of the offenses had already prescribed; and, regarding the offense related to conditions analogous that of a slave which had not yet prescribed, it was not feasible to prove its existence since more than five years had passed since the facts had occurred. Lastly, it emphasized that, regarding the 1993 inspection, the practice of slave labor had not been identified; however, the practice of illegal recruitment and violation of labor rights had been found.¹²⁵

The 1996 visit to Hacienda Brasil Verde

142. On November 29, 1996, the Ministry of Labor's Mobile Group conducted an inspection of Hacienda Brasil Verde, during which it determined the existence of irregularities consisting in the absence of worker records and, in general, conditions contrary to labor laws.¹²⁶ At the time of the inspection, 78 workers were active there, and 34 work permits (CTPs) were issued.¹²⁷

¹²¹ Communication No. 370/93 of the Regional Labor Delegation of Pará of August 2, 1993 (evidence file, folio 7494).

¹²² Communication No. 370/93 of the Regional Labor Delegation of Pará of August 2, 1993 (evidence file, folio 7494).

¹²³ Communication No. 006 of the Assistant Prosecutor General of the Republic of April 25, 1994 (evidence file, folio 566).

¹²⁴ Report of March 29, 1994 (evidence file, folio 568).

¹²⁵ Report of March 29, 1994 (evidence file, folios 568 and 569).

¹²⁶ Record of inspection of November 29, 1996 (evidence file, folio 7523).

¹²⁷ Record of inspection of November 29, 1996 (evidence file, folio 7523).

The 1997 visit to Hacienda Brasil Verde

143. On March 10, 1997, José da Costa Oliveira and José Ferreira dos Santos made a statement before the Pará Federal Police Department, Marabá Delegation, in which they stated that they had worked in and escaped from Hacienda Brasil Verde.¹²⁸ In this regard, José da Costa Oliveira stated that *gato* Raimundo had hired him to work in the hacienda and, when he arrived, he already owed money for his accommodation and the work tools that were provided by the *gato*.¹²⁹ The deponents added that the workers were threatened with death if they reported the *gato* or the owner of the hacienda, or if they tried to escape, and that the usual practice was to hide the workers when the Ministry of Labor conducted inspections.¹³⁰

144. Based on this report, the Ministry of Labor's Mobile Group made further inspection visits to Hacienda Brasil Verde on April 23, 28 and 29, 1997.¹³¹ The report on the Ministry of Labor's inspection visit concluded that: (i) the workers were housed in sheds covered with plastic and straw in which there was a "total lack of hygiene"; (ii) several workers had skin diseases and were not receiving medical care, and the water they drank was not fit for human consumption; (iii) all the workers had endured threats, including with firearms, and (iv) the workers stated that they were unable to leave the hacienda.¹³² In addition, the practice of hiding the workers when inspections were conducted was verified.¹³³ At the time of the inspection, 81 workers were found, and "approximately 45" work permits (CTPs) were issued to them.¹³⁴

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

145. As a result of the Ministry of Labor's report (*supra* para. 144), on June 30, 1997, the Federal Public Prosecution Service filed a complaint against: (a) Raimundo Alves de Rocha, *gato* or employer of rural workers, for the offenses established in articles 149 (slave labor), 197.1 (violation of freedom of work) and 207 (worker trafficking) of the Penal Code; (b) Antônio Alves Vieira, manager of Hacienda Brasil Verde, for the offenses established in articles 149 and 197.1 of the Penal Code, and (c) João Luiz Quagliato Neto, owner of Hacienda Brasil Verde, for the offense established in article 203 (violation of labor rights) of the Penal Code.¹³⁵ In the complaint, the Public Prosecution Service considered that:

Hacienda Brasil Verde is accustomed to hiring temporary rural workers, "laborers," to clear the *juquira* [or dense vegetation], such as the 32 (thirty-two) workers who were recruited [...] in the municipality of Xinguara by [...] an employer, in this case, the accused, Raimundo Alves da

¹²⁸ Statement by José da Costa Oliveira and José Ferreira dos Santos of March 10, 1997 (evidence file, folios 845 to 847).

¹²⁹ Statement by José da Costa Oliveira and José Ferreira dos Santos of March 10, 1997 (evidence file, folios 845 and 846).

¹³⁰ Statement by José da Costa Oliveira and José Ferreira dos Santos of March 10, 1997 (evidence file, folio 846).

¹³¹ Report of the visit to Hacienda Brasil Verde, Labor Mobile Group, April 23, 28 and 29, 1997 (evidence file, folios 4629 to 4638).

¹³² Report of the visits to Hacienda Brasil Verde, Labor Mobile Group, April 23, 28 and 29, 1997 (evidence file, folios 4629 and 4630).

¹³³ Report of the visits to Hacienda Brasil Verde, Labor Mobile Group, April 23, 28 and 29, 1997 (evidence file, folio 4637).

¹³⁴ Report of the visits to Hacienda Brasil Verde, Labor Mobile Group, April 23, 28 and 29, 1997 (evidence file, folio 4637).

¹³⁵ Complaint of the Federal Public Prosecution Service of June 30, 1997 (evidence file, folios 4623 and 4625 to 4628).

Rocha, between March 24 and April 14 this year [...] to work in another place for a wage. Part of this wage is provided before arriving at the place of work [...].

On arrival at the hacienda, the workers are lodged in huts covered by plastic and straw, without lateral protection. [...] The water they drink [...] is not fit for human consumption, because it comes from the bathroom and the drinking trough for the hacienda's animals. [...] Food, such as meat, is exposed to insects outdoors; it is distributed by [one of the] accused [...] by the *barracão* or "truck system" and by the [...] hacienda's middleman through the manager [...] Antônio Alves Vieira.

Several workers [...] stated that they were prohibited from leaving the hacienda under threat of death while they had debts [...] due to purchasing food at exorbitant prices [...] and because they started working with the debt for the hotel. [...] the pitiful wage they receive would never be enough to pay off their debts. In this regard, the owner of the hacienda profits by using workers who receive no salary for their work [...].

[...] The only way out of the hacienda is bordered by the office buildings and the house of the manager who does not allow the workers to leave [...].

Added to this, the inspection was conducted based on information provided by a worker [...] and several blank promissory notes signed by workers [were found].

[...] In December 1996, the inspection found the same irregularities. Moreover, in 1989, information had already been provided on offenses against the organization of work and reduction to a condition analogous to slavery. The failure to investigate the facts promptly and the prescription of the other offenses when the Federal Public Prosecution Service became aware of the facts, made it impossible to file a criminal action. [...] the owner of the hacienda, the third accused, was fully aware that, at the very least, he was committing the offense of violation of the workers' rights by deception.¹³⁶

146. Owing to the fact that the penalty established for the offense of which Mr. Quagliato Neto was accused was less than one year, the Public Prosecution Service proposed to suspend the proceedings against him for two years if he agreed to comply with certain conditions imposed by the federal judge.¹³⁷

147. In July 1997, the federal judge issued a summons to Raimundo Alves de Rocha and Antônio Alves Vieira.¹³⁸ On September 17, 1997, the federal judge ordered that a summons be issued to Mr. Quagliato Neto and conditioned the suspension of his prosecution on the acceptance of, and compliance with, a series of measures.¹³⁹

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

The proceeding conducted by the Ministry of Labor in relation to a second visit in 1997

149. On July 31, 1997, the Regional Labor Prosecutor (PRT) of the 22nd region informed the PRT of the 8th region of "the irregularity concerning worker trafficking in the state of Piauí for other states, including the state of Pará."¹⁴¹ On August 12, 1997, an administrative proceeding was opened by the PRT of the 8th region, requesting the

¹³⁶ Complaint of the Federal Public Prosecution Service of June 30, 1997 (evidence file, folios 4623 to 4626).

¹³⁷ Complaint of the Federal Public Prosecution Service of June 30, 1997 (evidence file, folio 4627).

¹³⁸ Communication No. 1183 of the Marabá Federal Judge of July 14, 1997 (evidence file, folio 4711).

¹³⁹ Decision of the Marabá Federal Judge of September 17, 1997 (evidence file, folio 4719).

¹⁴⁰ Communications of the Marabá Judiciary (evidence file, folios 4722, 4724, 4727, 4728, 4730, 4731, 4732 and 4735).

¹⁴¹ Communication No. 2,357/2001 of the Labor Public Prosecutor of June 21, 2001 (evidence file, folio 7525).

Prosecutor General of the Republic to determine the possible criminal acts committed in relation to worker trafficking.¹⁴²

150. On November 14, 1997, the Pará Regional Labor Delegation reported, with regard to Hacienda Brasil Verde, that even though some irregularities existed, such as charging the workers for their footwear and the absence of elements relating to health and safety in the workplace, the Delegation had “preferred not to act, but rather to provide advice so that the irregularities were rectified and [...] labor laws observed. [This] procedure constituted a kind of incentive to encourage the employer to conform to legal standards.”¹⁴³

151. On January 13, 1998, the Labor Prosecutor requested a further inspection of Hacienda Brasil Verde.¹⁴⁴ On March 5, 1998, the Pará Regional Labor Delegate responded that the procedure had not been carried out, but “had been scheduled.”¹⁴⁵

152. On June 17, 1998, the Labor Prosecutor requested information on the “current situation” of Hacienda Brasil Verde based on an article in the newspaper “*O Liberal*” of May 31, 1998.¹⁴⁶ On July 8, 1998, the Regional Labor Delegate reported that the hacienda had been inspected in October 1997, when “considerable progress” had been verified in relation to the irregularities noted during the previous inspection.¹⁴⁷

B. Facts that fall within the Court’s temporal jurisdiction

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, Mr. Quagliato Neto appeared before the court and the preliminary hearing of his case was held.¹⁴⁸ The day following this hearing, Mr. Quagliato Neto stated that he accepted the conditions imposed by the federal judge in order to suspend his trial, namely: delivery of six baskets of basic commodities to a charity organization in Ourinhos in the state of São Paulo.¹⁴⁹ On September 23, 1999, at the request of the Public Prosecution Service, the federal judge authorized the two-year conditional suspension 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 summoned to testify on several occasions.¹⁵¹ On May 23, 1999, they submitted their defense briefs.¹⁵² On March 2, 2000, the Ministry of Labor agents who had conducted the 1997 inspection testified.¹⁵³

¹⁴² Communication No. 2,357/2001 (evidence file, folio 7525).

¹⁴³ Communication No. 2,357/2001 (evidence file, folio 7526).

¹⁴⁴ Communication No. 2,357/2001 (evidence file, folio 7526).

¹⁴⁵ Communication No. 2,357/2001 (evidence file, folio 7526).

¹⁴⁶ Communication No. 2,357/2001 (evidence file, folio 7526).

¹⁴⁷ Communication No. 2,357/2001 (evidence file, folio 7526).

¹⁴⁸ Preliminary hearing of September 13, 1999 (evidence file, folio 4765).

¹⁴⁹ Brief of João Luiz Quagliato Neto of September 14, 1999 (evidence file, folio 4767).

¹⁵⁰ Decision of the Marabá substitute federal judge of September 23, 1999 (evidence file, folio 4768).

¹⁵¹ Communications of the Marabá Judiciary (evidence file, folios 4723, 4725, 4729, 4730, 4732, 4733, 4737 and 4739).

¹⁵² Brief of Raimundo Alves de Rocha (evidence file, folio 4750); brief of Antônio Vieira (evidence file, folio 4752).

¹⁵³ Testimonial statements (evidence file, folios 4784 to 4791).

155. During 2000, various hearings were scheduled in order to receive evidence. However, on March 16, 2001, the substitute federal judge in charge of the case declared the “absolute lack of jurisdiction of federal justice” to hear the proceedings, because the offenses that were being investigated constituted violations of individual rights of a group of workers, and not crimes against the organization of work; consequently, the case file was forwarded to the state justice system in Xinguara, Pará.¹⁵⁴ The judge considered that, based on case law in relation to jurisdiction *ratione materiae*, this could not be extended, at the risk of nullification, and it was necessary to recognize it *ex officio*.¹⁵⁵ No appeal of any kind was filed against this decision.

156. On August 8, 2001, the proceedings were re-opened by the Xinguara state justice system and, on October 25, 2001, the Prosecutor ratified the complaint. Subsequently, on May 23, 2002, the judge admitted the complaint.¹⁵⁶ On May 28, 2002, Mr. Quagliato Neto’s defense counsel asked the judge to declare that the criminal action against his client had terminated.¹⁵⁷

157. On November 11, 2002, Raimundo Alves Rocha and Antônio Vieira filed their defense brief and, on August 5, 2003, the judge established new dates to receive the defense statements.¹⁵⁸ On October 24 and November 18, 2003, the first statements offered by the defense were received.¹⁵⁹

158. On November 21, 2003, the Public Prosecution Service of the state of Pará presented its final arguments, in which it asked that the charges against Raimundo Alves da Rocha and Antônio Alves Vieira be considered inadmissible and that they be acquitted owing to the absence of sufficient evidence of their authorship.¹⁶⁰

159. On November 8, 2004, the state judiciary declared that it did not have jurisdiction to hear the criminal proceedings, and this gave rise to a conflict of competences.¹⁶¹ On September 26, 2007, the Third Section of the Superior Court of Justice informed the state judge that, having examined the conflict of competences in the case, it had decided that the competent jurisdiction was the federal jurisdiction.¹⁶² On December 11, 2007, the case file was forwarded to the federal jurisdiction of Marabá, Pará.¹⁶³

160. Having summoned Raimundo Alves da Rocha and Antônio Alves Vieira to appear before the court on several occasions in 2008, and since they had failed to come forward, on July 3, 2008, the judge established a time limit for the parties to submit their final arguments.¹⁶⁴ On July 10, 2008, the Federal Public Prosecution Service presented its final arguments in which it asked that the court order the termination of the criminal

¹⁵⁴ Decision of the Marabá substitute federal judge of March 16, 2001 (evidence file, folio 4813 to 4816).

¹⁵⁵ Decision of the Marabá substitute federal judge of March 16, 2001 (evidence file, folio 4816).

¹⁵⁶ Ratification of the complaint (evidence file, folio 4824 to 4826).

¹⁵⁷ Request of May 28, 2002, to declare the criminal proceedings terminated (evidence file, folio 4900).

¹⁵⁸ Ruling of the state judge of August 5, 2003 (evidence file, folio 5523).

¹⁵⁹ Hearing to receive testimonial evidence of October 24, 2003 (evidence file, folio 5528), and hearing to receive testimonial evidence of November 18, 2003 (evidence file, folio 5532).

¹⁶⁰ Final arguments of the Pará Public Prosecution Service (evidence file, folio 5544 to 5547).

¹⁶¹ Statement on conflict of competences (evidence file, folio 5557 to 5560).

¹⁶² Decision of the Superior Court of Justice (evidence file, folio 5588).

¹⁶³ Certification of case file transfer (evidence file, folio 5592).

¹⁶⁴ Ruling of the federal judge of May 26, 2008 (evidence file, folio 5600).

proceedings against Raimundo Alves da Rocha and Antônio Alves Vieira.¹⁶⁵ In this regard, it set out the following considerations:

[...] the inspection report of the Ministry of Labor describes the harsh conditions experienced by the Hacienda Brasil Verde workers, with no potable water, sleeping in huts covered with plastic and straw, with dirt floors, and without sanitary facilities, without individual safety equipment, without any protection against inclement weather. In addition, it verified the practice of violation, by fraud, of rights protected by the labor laws.

[...] sufficient evidence exists of the authorship of the practice of the offenses of reduction to a condition similar to that of slavery (art. 149, *caput*), violation of freedom of work (art. 197.1) and illegal recruitment of workers from one part of national territory to another (art. 207) by debt bondage.

[...] despite verification of the authorship and perpetration of the criminal acts, unfortunately, the offenses described in articles 197.1 and 207 of the Penal Code are already subject to the statute of limitations, considering that the facts were verified between April 21 and 30, 1997, and the maximum penalty for the respective offenses is from one to three years. Consequently, the state criminal action has prescribed based on article 109, VI of the Brazilian Penal Code.

Regarding the offense described in article 149 of the Penal Code, although the maximum penalty would end in April 2009, taking into account that this executive body was unable to find further elements that would sufficiently increase the eventual penalty to be applied, it must conclude that, in view of the possible penalty, the statute of limitations applies.¹⁶⁶

161. On July 10, 2008, in his ruling, the federal judge of the Pará Section declared that the criminal action had terminated with regard to Raimundo Alves da Rocha and Antônio Alves Vieira, taking into account that more than 10 years had passed since the complaint had been filed, that the maximum penalty that could be applied was 8 years, and that the penalty prescribed in 12 years; also that only if they had been sentenced to the maximum penalty would prescription not be in order.¹⁶⁷ The judge stated that it was “fairly improbable” that they would be sentenced to this penalty, so that prescription was “inevitable.” He considered that the probative elements produced during the criminal proceedings were “meaningless.” Based on the foregoing, and on the lack of action by the state, criminal policy, and procedural economy, the judge decided to declare the criminal proceedings extinct.¹⁶⁸

B.2. Continuation of the procedure conducted by the Ministry of Labor in relation to a second visit in 1997

162. On October 13, 1998, the Labor Public Prosecutor asked the Pará Regional Labor Delegation to conduct a further inspection in the hacienda owing to the time that had passed since the last one.¹⁶⁹ On February 8, 1999, the Pará Regional Labor Delegation advised that it had not carried out the inspection due to lack of financial resources.¹⁷⁰ On June 15, 1999, the Prosecutor repeated the request.¹⁷¹

¹⁶⁵ Final arguments of the Federal Public Prosecution Service (evidence file, folio 5616 to 5621).

¹⁶⁶ Final arguments of the Federal Public Prosecution Service (evidence file, folios 5619 to 5621).

¹⁶⁷ Judgment of July 10, 2008 (evidence file, folio 5622).

¹⁶⁸ Judgment of July 10, 2008 (evidence file, folio 5622).

¹⁶⁹ Communication No. 2,357/2001 (evidence file, folio 7526).

¹⁷⁰ Communication No. 2,357/2001 (evidence file, folio 7527).

¹⁷¹ Communication No. 2,357/2001 (evidence file, folio 7527).

163. On January 15, 1999, the Labor Public Prosecutor recommended to the owner of Hacienda Brasil Verde that he abstain from the practice of charging for footwear "at the risk of judicial measures being taken" in this regard.¹⁷²

B.3. The visit to Hacienda Brasil Verde in 2000

164. In February 2000, the *gato* known as "Meladinho" recruited workers in the municipality of Barras, state of Piauí, to work in Hacienda Brasil Verde.¹⁷³ The *gato* indicated that they would receive a salary of 10 reales for each "*alqueire* of *juquirá* they cleared,"¹⁷⁴ which the workers considered a very attractive salary. Furthermore, as part of the offer, the *gato* gave those who were interested an advance on the salary of between 30 and 60 reales. He also offered them transportation, food and accommodation during their time in the hacienda.

165. In order to reach Hacienda Brasil Verde, the recruited workers had to travel for approximately three days by bus, train and truck. Regarding the train journey, the presumed victims described how the trip caused them great suffering because they were placed in wagons without seats that were unsuitable for transporting people. They also declared that the truck was used to transport animals, and that they had to share the space with them, and felt profoundly humiliated. In addition, the workers had to spend a night in a hotel in Xinguara and incurred debts in this regard.¹⁷⁵

166. When the workers reached Hacienda Brasil Verde they handed over their work permits to the manager known as "Toninho," and the cards were never returned to them. Also, the manager obliged them to sign blank documents. The state was aware of this practice from previous inspections.¹⁷⁶ On reaching the hacienda, the workers realized that nothing they had been offered was true.¹⁷⁷ Regarding their accommodation, the workers slept in wooden huts without electricity, beds or cupboards. The walls were made of irregular planks and the roof of canvas, which meant that the workers got wet when it

¹⁷² Communication No. 2,357/2001 (evidence file, folio 7527).

¹⁷³ Cf. Report of March 31, 2000, on the inspection of Hacienda Brasil Verde (evidence file, folios 9571 to 9573); statement by Francisco Fabiano Leandro, received during the on-site procedure carried out on June 6, 2016; statement by Francisco das Chagas Bastos Souza, received during the on-site procedure carried out on June 6, 2016, and statement by Antônio Francisco da Silva, received during the on-site procedure carried out on June 6, 2016.

¹⁷⁴ "*Alqueire*" is a rural unit of measurement used in certain parts of Brazil.

¹⁷⁵ Cf. Statement by Marcos Antônio Lima, received during the on-site procedure carried out on June 6, 2016; statement by Francisco Fabiano Leandro, received during the on-site procedure carried out on June 6, 2016; statement by Rogério Félix da Silva, received during the on-site procedure carried out on June 6, 2016; statement by Francisco das Chagas Bastos Souza, received during the on-site procedure carried out on June 6, 2016; statement by Antônio Francisco da Silva, received during the on-site procedure carried out on June 6, 2016; statement by José Batista Gonçalves Afonso, CPT Regional Coordinator, on the situation of Antônio Francisco da Silva and Gonçalo Luiz Furtado, provided on March 8, 2000 (evidence file, folio 1038); affidavit of Francisco de Assis Félix, dated May 8, 2015 (evidence file, folio 7570), and statement by Vanilson Rodrigues Fernandes, Labor Prosecutor, before the Marabá Court regarding the 1997 inspection (evidence file, folio 4787).

¹⁷⁶ Cf. Communication PRT 8ª 2357/2001, of June 21, 2001, folio 9573.

¹⁷⁷ Cf. Statement by Marcos Antônio Lima, received during the on-site procedure carried out on June 6, 2016; statement by Rogério Félix da Silva, received during the on-site procedure carried out on June 6, 2016; statement by Francisco das Chagas Bastos Souza, received during the on-site procedure carried out on June 6, 2016; statement by Antônio Francisco da Silva, received during the on-site procedure carried out on June 6, 2016; statement by José Batista Gonçalves Afonso, CPT Regional Coordinator, on the situation of Antônio Francisco da Silva and Gonçalo Luiz Furtado, provided on March 8, 2000 (evidence file, folio 1038); affidavit of Antônio Fernandes da Costa, dated May 8, 2015 (evidence file, folio 7565); Affidavit of Francisco de Assis Félix, dated May 8, 2015 (evidence file, folio 7570); Report of March 31, 2000, on the inspection of Hacienda Brasil Verde (evidence file, folios 9573 and 9574), and public civil action filed by the Ministry of Labor against João Luiz Quagliato – Hacienda Brasil Verde, on May 30, 2000 (evidence file, folio 1049).

rained. Dozens of workers slept in the huts in hammocks or on nets. The condition of the toilets and the showers was execrable; outside the hut among the vegetation, without walls or a roof. Moreover, since the sanitary facilities were so dirty, some workers preferred to relieve themselves in the vegetation and bathe in a stream, or not bathe at all.¹⁷⁸

167. In addition, the food that the workers received was insufficient, repetitive and of poor quality. The meals were prepared by the hacienda cook in a rundown place and in the open air. The water they consumed came from a small waterfall among the vegetation, and was stored in inadequate recipients and distributed in communal bottles. During the working day, the workers had lunch in the plantations where they were working. Also, all the food they ate was entered into notebooks and then deducted from their salaries.¹⁷⁹

168. The workers were woken up violently at las 3 a.m. by one of the hacienda foremen. They then had to go on foot or by truck to the plantation where they would be working, which was several kilometers from the huts. The working day lasted 12 hours or more, from around 6 a.m. to 6 p.m., with a half-hour rest for lunch. The workers were divided into groups of approximately 10 people and worked clearing the dense vegetation. When their workday concluded, the workers were collected by truck and returned to the huts. Sundays were their only day of rest.¹⁸⁰

169. Because, among other factors, they consumed contaminated water and worked in the rain and with their feet in water, some workers easily fell ill on a regular basis. In particular, the workers suffered from foot fungi, which caused them a lot of pain, to the point that it prevented them from putting on their working boots. However, there were no medical personnel in the hacienda to treat them, and they did not receive visits by doctors from the nearby villages. If the workers who were ill wanted medicines, they had to ask the hacienda foremen to obtain them and the latter bought the medication in the village, deducting the cost from their salaries. As the workers were paid based on the work they did, they had to go to the plantations even though they were ill.¹⁸¹

¹⁷⁸ Cf. Statement by Marcos Antônio Lima, received during the on-site procedure carried out on June 6, 2016; statement by Francisco Fabiano Leandro, received during the on-site procedure carried out on June 6, 2016; statement by Rogerio Félix da Silva, received during the on-site procedure carried out on June 6, 2016; statement by Francisco das Chagas Bastos Souza, received during the on-site procedure carried out on June 6, 2016; statement by Antônio Francisco da Silva, received during the on-site procedure carried out on June 6, 2016; affidavit of Antônio Fernandes da Costa, dated May 8, 2015 (evidence file, folio 7566); Affidavit of Francisco de Assis Félix, dated May 8, 2015 (evidence file, folio 7570), and Report of March 31, 2000, on the inspection of Hacienda Brasil Verde (evidence file, folio 9574).

¹⁷⁹ Cf. Statement by Marcos Antônio Lima, received during the on-site procedure carried out on June 6, 2016; statement by Rogerio Félix da Silva, received during the on-site procedure carried out on June 6, 2016; statement by Francisco das Chagas Bastos Souza, received during the on-site procedure carried out on June 6, 2016; statement by José Batista Gonçalves Afonso, CPT Regional Coordinator, on the situation of Antônio Francisco da Silva and Gonçalo Luiz Furtado, provided on March 8, 2000 (evidence file, folio 1038); affidavit of Antônio Fernandes da Costa, dated May 8, 2015 (evidence file, folio 7566); Affidavit of Francisco de Assis Félix, dated May 8, 2015 (evidence file, folios 7571 and 7572), and Report of March 31, 2000, on the inspection of Hacienda Brasil Verde (evidence file, folio 9574).

¹⁸⁰ Cf. Statement by Marcos Antônio Lima, received during the on-site procedure carried out on June 6, 2016; statement by Francisco Fabiano Leandro, received during the on-site procedure carried out on June 6, 2016; statement by Rogerio Félix da Silva, received during the on-site procedure carried out on June 6, 2016; statement by Francisco das Chagas Bastos Souza, received during the on-site procedure carried out on June 6, 2016; statement by José Batista Gonçalves Afonso, CPT Regional Coordinator, on the situation of Antônio Francisco da Silva and Gonçalo Luiz Furtado, provided on March 8, 2000 (evidence file, folio 1038); Affidavit of Francisco de Assis Félix, dated May 8, 2015 (evidence file, folio 7570), and Report of March 31, 2000, on the inspection of Hacienda Brasil Verde (evidence file, folio 9573).

¹⁸¹ Cf. Statement by Marcos Antônio Lima, received during the on-site procedure carried out on June 6, 2016; statement by Rogerio Félix da Silva, received during the on-site procedure carried out on June 6, 2016; statement by Antônio Francisco da Silva, received during the on-site procedure carried out on June 6, 2016; affidavit of Antônio Fernandes da Costa, dated May 8, 2015 (evidence file, folio 7566), and Affidavit of Francisco de Assis Félix, dated May 8, 2015 (evidence file, folio 7571).

170. Moreover, to receive a salary, the workers had to meet production goals that were assigned to them by the hacienda foremen; but it was very difficult to achieve these goals and, therefore, they received no payment for their work.¹⁸²

171. The workers were also obliged to do their work under the orders and threats of the hacienda foremen. These men carried firearms and watched over them at all times. Also, one of their guards told the presumed victims that he had killed a worker following a discussion and had buried him on the hacienda; the workers were therefore afraid that the same could happen to them. Also, Antônio Francisco da Silva reported the disappearance of one of his companions who worked in Hacienda Brasil Verde to the Federal Police. Based on the foregoing, the workers could not leave the hacienda and feared for their lives.¹⁸³

172. As a result of the prohibition to leave the hacienda, if the workers needed to buy something, they had to tell the hacienda foremen and the latter would go to the town, make the corresponding purchases and deliver them, making the corresponding salary deduction.¹⁸⁴

173. Owing to the situation in which the workers found themselves, they longed to escape from the hacienda. However, the surveillance to which they were subjected, added to the absence of a salary, the isolated location of the hacienda, and the presence of wild animals in the surrounding areas, prevented them from returning to their homes. Moreover, if the guards caught someone trying to escape from the hacienda, in addition to returning him, they destroyed his clothes and his sleeping hammock.¹⁸⁵

174. The youths, Antônio Francisco da Silva and Gonçalo Luiz Furtado, decided to leave the hacienda during the first week therefore, of March 2000. Between March 3 and 5, at around 3 a.m., one of the guards came to the hut to wake the workers. Antônio Francisco da Silva had a fever, and his companion, Gonçalo Luiz Furtado found it difficult to work as he had a prosthetic leg. The guard angrily asked them if they were going to work and they answered that they could not because they were ill. The guard beat them, forced them into a vehicle and took them to the hacienda's central office. There, Gonçalo Luiz Furtado was

¹⁸² Cf. Statement by Marcos Antônio Lima, received during the on-site procedure carried out on June 6, 2016; statement by Francisco Fabiano Leandro, received during the on-site procedure carried out on June 6, 2016; statement by Rogerio Félix da Silva, received during the on-site procedure carried out on June 6, 2016; statement by Francisco das Chagas Bastos Souza, received during the on-site procedure carried out on June 6, 2016; statement by José Batista Gonçalves Afonso, CPT Regional Coordinator, on the situation of Antônio Francisco da Silva and Gonçalo Luiz Furtado, provided on March 8, 2000 (evidence file, folio 1038); Affidavit of Francisco de Assis Félix, dated May 8, 2015 (evidence file, folio 7571), and Report of March 31, 2000, on the inspection of Hacienda Brasil Verde (evidence file, folio 9573).

¹⁸³ Cf. Statement by Marcos Antônio Lima, received during the on-site procedure carried out on June 6, 2016; statement by Rogerio Félix da Silva, received during the on-site procedure carried out on June 6, 2016; statement by Antônio Francisco da Silva, received during the on-site procedure carried out on June 6, 2016; statement by José Batista Gonçalves Afonso, CPT Regional Coordinator, on the situation of Antônio Francisco da Silva and Gonçalo Luiz Furtado, provided on March 8, 2000 (evidence file, folio 1038); Affidavit of Francisco de Assis Félix, dated May 8, 2015 (evidence file, folio 7570 a 7572), and Report of March 31, 2000, on the inspection of Hacienda Brasil Verde (evidence file, folio 9572).

¹⁸⁴ Cf. Statement by Rogerio Félix da Silva received during the on-site procedure carried out on June 6, 2016, and Affidavit of Francisco de Assis Félix, dated May 8, 2015 (evidence file, folio 7572).

¹⁸⁵ Cf. Statement by Marcos Antônio Lima, received during the on-site procedure carried out on June 6, 2016; statement by Rogerio Félix da Silva, received during the on-site procedure carried out on June 6, 2016; statement by Francisco das Chagas Bastos Souza, received during the on-site procedure carried out on June 6, 2016; statement by Antônio Francisco da Silva, received during the on-site procedure carried out on June 6, 2016; affidavit of Antônio Fernandes da Costa, dated May 8, 2015 (evidence file, folio 7566); Affidavit of Francisco de Assis Félix, dated May 8, 2015 (evidence file, folio 7573), and Report of March 31, 2000, on the inspection of Hacienda Brasil Verde (evidence file, folio 9572).

beaten again and told that his prosthetic leg would be torn off him. One of the guards threatened to tie them up for 15 days and even kill them immediately. The two youths were very frightened. The guard took them behind the office, continued beating them, and then went to talk to the other hacienda foremen. The young men took advantage of this opportunity to flee. They walked through the forest, because they were afraid they would be found if they traveled by road; they drank water from the forest floor and from the rivers they came across.¹⁸⁶

175. Subsequently, the youths reached a road. They were able to stop a petrol truck that passed by; they told their story to the driver and he agreed to take them to Marabá. When the young men found the Police Station, on March 7, 2000, they explained their situation to an agent who was on duty. However, the agent told them that he could not help them as the police chief was not working because it was carnival time, and told them to return in two days' time. The youths slept on the streets of Marabá and then returned to the Federal Police Station. That day they spoke to a police agent, but were advised to seek help from the *Comissão Pastoral da Terra*. The CPT looked after the young men for several days.¹⁸⁷

176. The police agent who sent the young men to the CPT offices advised the *Comissão Pastoral* that the Ministry of Labor had been contacted and had promised to send a team of labor inspectors, accompanied by Marabá federal police agents, to Hacienda Brasil Verde to draw up the corresponding reports.¹⁸⁸

177. On March 15, 2000, Ministry of Labor inspectors, accompanied by Federal Police agents, conducted an inspection of the hacienda. On arriving at Hacienda Brasil Verde they noted that there were only about 45 workers. They then went to Hacienda San Carlos where they found the other workers. The police interviewed the workers and questioned them about their arrival at the hacienda, their salaries and their personal papers. The workers were asked if they wished to leave the hacienda and return to their homes, and the workers indicated their "unanimous decision to leave" and to return to their places of origin where they had been recruited.¹⁸⁹ Nevertheless, the rescue did not take place that day and, therefore, the workers had to spend that night in the hacienda, a situation that made them extremely fearful, because they were afraid that the hacienda foremen would kill them while they slept.¹⁹⁰ The Pará Regional Labor Delegation also verified the existence

¹⁸⁶ Cf. Statement by Antônio Francisco da Silva, received during the on-site procedure carried out on June 6, 2016; statement by José Batista Gonçalves Afonso, CPT Regional Coordinator, on the situation of Antônio Francisco da Silva and Gonçalo Luiz Furtado, provided on March 8, 2000 (evidence file, folio 1038), and Report of March 31, 2000, on the inspection of Hacienda Brasil Verde (evidence file, folio 9572).

¹⁸⁷ Cf. Statement by Antônio Francisco da Silva, received during the on-site procedure carried out on June 6, 2016; statement by José Batista Gonçalves Afonso, CPT Regional Coordinator, on the situation of Antônio Francisco da Silva and Gonçalo Luiz Furtado, provided on March 8, 2000 (evidence file, folio 1038), and Report of March 31, 2000, on the inspection of Hacienda Brasil Verde (evidence file, folio 9572).

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

¹⁸⁹ Report of the Pará Regional Labor Delegation (evidence file, folios 9573 and 9574).

¹⁹⁰ Cf. Statement by Marcos Antônio Lima, received during the on-site procedure carried out on June 6, 2016; statement by Francisco Fabiano Leandro, received during the on-site procedure carried out on June 6, 2016; statement by Rogerio Félix da Silva, received during the on-site procedure carried out on June 6, 2016; statement by Francisco das Chagas Bastos Souza, received during the on-site procedure carried out on June 6, 2016, folio 1038); affidavit of Antônio Fernandes da Costa, dated May 8, 2015 (evidence file, folio 7567); Affidavit of Francisco de Assis Félix, dated May 8, 2015 (evidence file, folio 7573), and Report of March 31, 2000, on the inspection of Hacienda Brasil Verde (evidence file, folios 9573 to 9575).

¹⁹⁰ Cf. Statement by Marcos Antônio Lima, received during the on-site procedure carried out on June 6, 2016; statement by Francisco Fabiano Leandro, received during the on-site procedure carried out on June 6, 2016; statement by Rogerio Félix da Silva, received during the on-site procedure carried out on June 6, 2016; statement by Francisco das Chagas Bastos Souza, received during the on-site procedure carried out on June 6, 2016, folio 1038); affidavit of Antônio Fernandes da Costa, dated May 8, 2015 (evidence file, folio 7567); Affidavit of

of armed guards in the hacienda,¹⁹¹ and corroborated that the workers had been made to sign blank fixed-term and indefinite contracts.¹⁹²

178. The following day, the Ministry of Labor inspectors obliged a manager of the hacienda to pay the workers the salaries owed in order to terminate their work contracts. It also obliged him to return their work permits. The police agents gave the work permits back to the workers together with some papers and money. However, even though the rescued workers were illiterate and bewildered by the situation, the state agents did not explain to them what the money was for, or what the papers they had been given contained. The inspection report indicated that 82 persons were working in the hacienda.¹⁹³

B.4. The procedure carried out by the Ministry of Labor in relation to the visit in 2000

179. On May 30, 2000, based on the inspection report of March 15, 2000, the Labor Public Prosecutor filed a public civil action before the labor judge against the owner of Hacienda Brasil Verde, João Luiz Quagliato.¹⁹⁴ The Prosecutor underscored that it could be concluded that: (i) Hacienda Brasil Verde kept workers "under a private prison system"; (ii) "the work [was] characterized by the system of slavery," and (iii) the situation was aggravated because those involved were illiterate rural workers, without any education, who had been subjected "to degrading living conditions."¹⁹⁵

180. Based on the above, the Labor Public Prosecutor concluded that João Luiz Quagliato must "halt slave labor, ceasing forced labor and the prison regime, and never again practice slave labor, because this was a crime and a violation of freedom of work."¹⁹⁶

181. On June 9, 2000, the Conciliation and Prosecution Board of Conceição do Araguaia summoned the Labor Public Prosecutor and João Luiz Quagliato to a hearing concerning the charges filed by the Public Prosecution Service.¹⁹⁷ On July 20, 2000, the hearing was held, in the course of which João Luiz Quagliato undertook:

Not to admit or permit the work of employees under a slavery regime, at the risk of a fine of 10,000 UFIR for each worker, white or black, found in that situation; to provide lodging, sanitary facilities, potable water, and accommodation that was decent for people [...] at the risk of a fine of 500 UFIR for non-compliance [...]; not to request employees to sign blank documents of any kind, at the risk of a fine of 100 UFIR for any document found in this condition.¹⁹⁸

182. On August 14, 2000, the Labor Public Prosecutor asked the Pará Regional Labor Delegation to determine whether João Luiz Quagliato was complying with the terms of the judicial arrangement he had reached with the Labor Public Prosecutor.¹⁹⁹ On August 18, 2000, the proceedings were archived.²⁰⁰

Francisco de Assis Félix, dated May 8, 2015 (evidence file, folio 7573), and Report of March 31, 2000, on the inspection of Hacienda Brasil Verde (evidence file, folios 9573 to 9575).

¹⁹¹ Report of the Pará Regional Labor Delegation (evidence file, folio 9573).

¹⁹² Report of the Pará Regional Labor Delegation (evidence file, folio 9574).

¹⁹³ Public civil action of May 30, 2000 (evidence file, folio 1049).

¹⁹⁴ Public civil action of May 30, 2000 (evidence file, folio 1049).

¹⁹⁵ Public civil action of May 30, 2000 (evidence file, folio 1052).

¹⁹⁶ Public civil action of May 30, 2000 (evidence file, folio 1053).

¹⁹⁷ Notifications of June 9, 2000 (evidence file, folios 5787 and 5788).

¹⁹⁸ Arrangement reached during the hearing of July 20, 2000 (evidence file, folio 5794).

¹⁹⁹ Communication No. 2,357/2001 of June 21, 2001 (evidence file, folio 1033).

²⁰⁰ Communication No. 2,357/2001 of June 21, 2001 (evidence file, folio 1033).

183. On June 21, 2001, the Labor Public Prosecution Service forwarded to the Assistant Prosecutor General of the Republic a detailed report of the proceedings it had instituted in relation to the companies belonging to the Quagliato Group, including Hacienda Brasil Verde.²⁰¹

184. From May 12 to 18, 2002, the Ministry of Labor conducted another inspection in Xinguara, Curionópolis and Sapucaia to verify compliance with the agreements reached between the Labor Public Prosecution Service and several rural employers.²⁰² A visit was made to Hacienda Brasil Verde during this inspection.²⁰³ Following the inspection, it was concluded that the employers were complying with their commitments²⁰⁴ and that, as a result of these undertakings, the direct management of the employees by the employer had eliminated the workers' financial and material dependence on the *gatos*, who were the cause of the practice of forced labor and conditions similar to those of slavery.²⁰⁵

B.5. Criminal proceedings in relation to the 2000 inspection

185. In 2000, following the inspection in Hacienda Brasil Verde, the Federal Public Prosecution Service filed criminal complaint No. 0472001 before the Marabá Federal Court, in Pará. The federal court declined competence in favor of the state court on July 11, 2001. The State advised the Inter-American Court that there is no information about what happened to this complaint and that it had been unable to find a copy of the investigation records.²⁰⁶ Therefore, the Court has no information regarding these criminal proceedings, other than that a complaint was filed by the Public Prosecution Service in relation to the facts that were the purpose of the April 200 inspection in Hacienda Brasil Verde.

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

186. On October 29, 2007, the head of the Pará Police Department request the *Comissão Pastoral da Terra* to forward a copy of the report of the disappearance of Iron Canuto da Silva and Luis Ferreira da Cruz to support the investigation into the facts.²⁰⁷ In July 2007 and February 2009, the Pará State Secretariat for Justice and Human Rights interviewed the next of kin of Iron Canuto da Silva and Luis Ferreira da Cruz to obtain information on their whereabouts.²⁰⁸

187. Iron Canuto da Silva's companion advised that she had lived with him for 13 years and that they had had four children; she had lived with him in Arapoema, 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 companion stated that, on July 22, 2007, he had died in circumstances unrelated to the instant case.²¹⁰

²⁰¹ Communication No. 2,357/2001 of June 21, 2001 (evidence file, folio 1031).

²⁰² Report of June 2002 inspection (evidence file, folio 1056).

²⁰³ Report of June 2002 inspection (evidence file, folio 1056).

²⁰⁴ Report of June 2002' inspection (evidence file, folio 1062).

²⁰⁵ Report of June 2002 inspection (evidence file, folio 1063).

²⁰⁶ The State's brief of June 27, 2016 (merits file, folio 1698).

²⁰⁷ Communication No. 1254/2007 of October 29, 2007 (evidence file, folio 1009).

²⁰⁸ Statement by Maria do Socorro Canuto of February 17, 2009 (evidence file, folio 7442) and statement by Raimunda Marcia Azevedo da Silva of July 22, 2007 (evidence file, folio 7445).

²⁰⁹ Statement by Raimunda Marcia Azevedo da Silva of July 22, 2007 (evidence file, folio 7445).

²¹⁰ Statement by Maria do Socorro Canuto of February 17, 2009 (evidence file, folio 7442) and statement by Raimunda Marcia Azevedo da Silva of July 22, 2007 (evidence file, folio 7445). Autopsy report of Iron Canuto da Silva (evidence file, folios 7451 and 7452).

188. Regarding Luis Ferreira da Cruz, on February 17, 2009, his foster mother advised the Pará Secretariat for Justice and Human Rights that she “had no information on his whereabouts.”²¹¹ Subsequently, in August 2015, she told the Federal Police that Luis had died “around ten years previously in a confrontation with the police.”²¹² Meanwhile, the half-sister of Luis Ferreira da Cruz also advised that he had died ten years before, and “as he was carrying no personal papers when he was murdered, [...] he was given an indigent burial.”²¹³

VII DETERMINATION OF THE PRESUMED VICTIMS

189. In this chapter, the Court will include prior considerations on the persons it will consider presumed victims in this case, describing the evidence and the reasons for finding them as such. Despite its considerations on the jurisdiction *ratione temporis* in this case (*supra* paras. 63 to 65), the Court will rule on the alleged violations that are based on facts that occurred or persisted after December 10, 1998. Accordingly, in addition to the alleged forced disappearance of Luis Ferreira da Cruz and Iron Canuto da Silva, in this judgement, the Court will examine the alleged violations related to facts that took place or continued after the date indicated above: in other words: (i) the investigation and proceedings instituted as a result of the April 1997 inspection in Hacienda Brasil Verde, and (ii) the March 2000 inspection in Hacienda Brasil Verde, and the respective investigation that was opened subsequently.

190. However, before beginning to analyze the merits of the case, the Court finds it necessary to include some prior considerations to establish clearly the presumed victims who will be taken into consideration in this case and who are connected to the facts of the case that fall within its jurisdiction *ratione temporis*. First, the Court notes that the lists of presumed victims provided by the parties and the Commission contain numerous differences in the identification of the workers who were providing their services in Hacienda Brasil Verde at the time of the April 1997 and March 2000 inspections.

191. In this regard, the Court finds it evident that this case is of a collective nature and that, in addition to the large number of presumed victims who have been named, it has been extremely complicated to identify and locate them following the said inspections. Bearing this in mind, the Court concludes that, in this specific case, the exceptional circumstance established in Article 35(2) of the Court’s Rules of Procedure is applicable. Consequently, it will now proceed to determine the persons who were providing their services in Hacienda Brasil Verde at the time of the inspections in 1997 and 2000.

A. April 1997 inspection

A.1. Arguments of the parties and of the Commission

192. In its Merits Report, the **Commission** indicated that, at the time of the April 1997 inspection, there were 81 workers in Hacienda Brasil Verde, but it had only been able to identify the names of 59 of them. It also indicated that 12 of them had been identified by means of informal invoices for debts the workers contracted with the employer and that, in many cases, the workers appeared registered without their last names or with aliases, or

²¹¹ Statement by Maria do Socorro Canuto of February 17, 2009 (evidence file, folio 7442).

²¹² Report No. 3/2015 of the Federal Police of August 4, 2015 (evidence file, folio 10766).

²¹³ Report No. 3/2015 of the Federal Police of August 4, 2015 (evidence file, folio 10766).

their names were illegible. Consequently, the Commission had insufficient information to determine whether or not a worker had been identified previously.

193. Meanwhile, the **representatives** agreed with the Commission that, at the time of the April 1997 inspection, there were 81 workers in Hacienda Brasil Verde. However, they added that, according to the inspection report, 12 other workers had escaped before the Ministry of Labor and the Federal Police visited Hacienda Brasil Verde, which gave a total of 93 presumed victims. Despite this, the representatives included the names of 96 workers on their list of presumed victims, explaining that 49 of the names had been obtained from informal notes for purchases or blank receipts.

194. By comparison, the **State** argued that it was necessary to distinguish the total number of "workers found" from the total number of "workers rescued" by the Ministry of Labor and the Federal Police. Thus, although the inspection report indicated that there were 81 workers in Hacienda Brasil Verde, only 36 workers were rescued, which meant that only these 36 were in a specific situation of risk to their physical integrity in order to consider them presumed victims in this case. Consequently, the State asserted that, regarding the other 45 individuals who had been indicated, there was no evidence to prove that they had been victims of violations of the rights recognized in the American Convention.

A.2. Considerations of the Court

195. The Court has verified that the notes for purchases and the blank receipts on which the debts of the Hacienda Brasil Verde workers were recorded were informal handwritten records, in which the complete name of the worker was not included and, at times, only their aliases were written. For example, some of the names of those who were presented as presumed victims based on the notes for purchases or blank receipts were as follows: Antônio "Caititu," Antônio "Capixaba," Irineu, José Carlos, José Francisco, Francisco, "Índio," "Mato Grosso," "Pará" and "Parazinho."

196. Consequently, the Court finds that there is a reasonable doubt as regards the fact that the name indicated on a purchase note or blank receipt could refer to a worker previously identified by another evidentiary document, or even a worker who was not in Hacienda Brasil Verde at the time of the April 1997 inspection. Accordingly, the Court considers that, for the effects of this case, the purchase notes or blank receipts do not provide certain proof of the presence of a specific worker in Hacienda Brasil Verde at the time of the April 1997 inspection, or of his consequent status of presumed victim.

197. Nevertheless, the Court finds it pertinent to indicate that the determination that a worker is a presumed victim of alleged violations of the Convention is not derived exclusively from a possible rescue by the Ministry of Labor or the Federal Police, but from the conditions he experienced during the time he provided his services in the hacienda, as well as from the respective investigations in this regard, regardless of whether he was rescued during the inspection. Consequently, the Court rejects the State's argument that only those workers who were rescued from Hacienda Brasil Verde by state agents may be presumed victims.

198. That said, bearing in mind that, in order to analyze this case, the Court requires a minimum degree of certainty about the existence of such persons²¹⁴ in order to prove their status as presumed victims, the Court used the following evidentiary instruments provided by the parties: (i) Record of offenses (RI); (ii) Record of hacienda employees (RE); (iii) Contract termination document (TC); (iv) Physical Verification Form (VF), and (v) List of

²¹⁴ Cf. *Case of the Massacres of El Mozote and neighboring places*, para. 54.

workers indicated by the defense counsel of the manager and the *gato* during the domestic criminal proceedings (PP). An analysis of these documents revealed that: (a) 26 individuals²¹⁵ were presented as presumed victims based exclusively on purchase notes or blank receipts; (b) in the case of 10 individuals,²¹⁶ there was no evidence to prove their status as presumed victim, and (c) 14 individuals²¹⁷ refer to workers who were identified previously.

199. Accordingly, of the group of workers present in Hacienda Brasil Verde at the time of the April 1997 inspection, when delivering this judgment, the Court has sufficient and reliable probative elements to prove the status of presumed victims of alleged violations of the right to judicial guarantees and protection of the following 43 workers: 1. Antônio Alves de Souza;²¹⁸ 2. Antônio Bispo dos Santos;²¹⁹ 3. Antônio da Silva Nascimento;²²⁰ 4. Antônio Pereira da Silva;²²¹ 5. Antônio Renato Barros;²²² 6. Benigno Rodrigues da Silva;²²³ 7. Carlos Alberto Albino da Conceição;²²⁴ 8. Cassimiro Neto Souza Maia;²²⁵ 9. Dijalma Santos Batista;²²⁶ 10. Edi Souza de Silva;²²⁷ 11. Edmilson Fernandes dos Santos;²²⁸ 12. Edson Pociônio da Silva;²²⁹ 13. Irineu Inácio da Silva;²³⁰ 14. Geraldo Hilário de Almeida;²³¹ 15.

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."

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 relation to Antônio Alves de Souza; 2. Antônio Renato in relation to Antônio Renato Barros; 3. Dijalma Santos in relation to Dijalma Santos Batista; 4. Irineu in relation to Irineu Inácio da Silva; 5. João Germano in relation to João Germano da Silva; 6. João Pereira in relation to João Pereira Marinho; 7. Joaquim Francisco in relation to Joaquim Francisco Xavier; 8. José Carlos in relation to José Carlos Alves dos Santos; 9. José Francisco in relation to José Francisco de Lima; 10. Manoel Alves in relation to Manoel Alves de Oliveira; 11. Pedro P. Andrade in relation to Pedro Pereira de Andrade; 12. Raimundo Gonçalves in relation to Raimundo Gonçalves Lima; 13. Raimundo Nonato in relation to Raimundo Nonato da Silva, 14. Sebastião Rodrigues in relation to Sebastião Rodrigues da Silva.

²¹⁸ Cf. RI (evidence file, folio 1255); RE (evidence file, folio 1752); TC (evidence file, folio 1753), and PP (evidence file, folio 600).

²¹⁹ Cf. RI (evidence file, folio 1257); RE (evidence file, folio 1756); TC (evidence file, folio 1757), and PP (evidence file, folio 600).

²²⁰ Cf. RI (evidence file, folio 1257); RE (evidence file, folio 1754); TC (evidence file, folio 1755), and PP (evidence file, folio 600).

²²¹ Cf. RI (evidence file, folio 1254); VF (evidence file, folio 1226); RE (evidence file, folio 1758); TC (evidence file, folio 1759), and PP (evidence file, folio 600).

²²² Cf. RI (evidence file, folio 1255); RE (evidence file, folio 1760); TC (evidence file, folio 1761), and PP (evidence file, folio 600).

²²³ Cf. RE (evidence file, folio 1738) and PP (evidence file, folio 600).

²²⁴ Cf. RI (evidence file, folio 1256); RE (evidence file, folio 1762); TC (evidence file, folio 1763), and PP (evidence file, folio 600).

²²⁵ Cf. RI (evidence file, folio 1257); RE (evidence file, folio 1764); TC (evidence file, folio 1765), and PP (evidence file, folio 600).

²²⁶ Cf. RI (evidence file, folio 1257); RE (evidence file, folio 1766); TC (evidence file, folio 1767), and PP (evidence file, folio 600).

²²⁷ Cf. RI (evidence file, folio 1254).

²²⁸ Cf. RI (evidence file, folio 1257); RE (evidence file, folio 1768); TC (evidence file, folio 1769), and PP (evidence file, folio 600).

²²⁹ Who also appears as Edson Possidonio. Cf. RI (evidence file, folio 1255); RE (evidence file, folio 1770); TC (evidence file, folio 1771), and PP (evidence file, folio 600).

²³⁰ Cf. RI (evidence file, folio 1255).

João de Deus dos Reis Salvino;²³² 16. João Germano da Silva;²³³ 17. João Pereira 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 Moraes;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

²³¹ Cf. RE (evidence file, folio 1740), and PP (evidence file, folio 600).

²³² Cf. RI (evidence file, folio 1256).

²³³ Cf. RI (evidence file, folio 1254); RE (evidence file, folio 1772); TC (evidence file, folio 1773), and PP (evidence file, folio 600).

²³⁴ Cf. VF (evidence file, folio 1230); RE (evidence file, folio 1742); TC (evidence file, folio 1743), and PP (evidence file, folio 600).

²³⁵ Cf. RI (evidence file, folio 1257); RE (evidence file, folio 1774); TC (evidence file, folio 1775), and PP (evidence file, folio 600).

²³⁶ Cf. RI (evidence file, folio 1257); RE (evidence file, folio 1776); TC (evidence file, folio 1777), and PP (evidence file, folio 600).

²³⁷ Cf. RI (evidence file, folio 1256); RE (evidence file, folio 1778); TC (evidence file, folio 1779), and PP (evidence file, folio 600).

²³⁸ Cf. RI (evidence file, folio 1254).

²³⁹ Cf. RI (evidence file, folio 1254); RE (evidence file, folio 1780); TC (evidence file, folio 1781), and PP (evidence file, folio 600).

²⁴⁰ Cf. RI (evidence file, folio 1255); RE (evidence file, folio 1782); TC (evidence file, folio 1783), and PP (evidence file, folio 600).

²⁴¹ Cf. RI (evidence file, folio 1256); RE (evidence file, folio 1784); TC (evidence file, folio 1785), and PP (evidence file, folio 600).

²⁴² Cf. RI (evidence file, folio 1255); RE (evidence file, folio 1786); TC (evidence file, folio 1787), and PP (evidence file, folio 600).

²⁴³ Cf. RI (evidence file, folio 1254); RE (evidence file, folio 1791); TC (evidence file, folio 1790), and PP (evidence file, folio 600).

²⁴⁴ Cf. RI (evidence file, folio 1255); RE (evidence file, folio 1792); TC (evidence file, folio 1793), and PP (evidence file, folio 600).

²⁴⁵ Cf. RI (evidence file, folio 1256); RE (evidence file, folio 1788); TC (evidence file, folio 1789), and PP (evidence file, folio 600).

²⁴⁶ Who also appears as Manuel Fernandes dos Santos. Cf. RE (evidence file, folio 1744); TC (evidence file, folio 1745), and PP (evidence file, folio 600).

²⁴⁷ Cf. RI (evidence file, folio 1254); RE (evidence file, folio 1794); TC (evidence file, folio 1795), and PP (evidence file, folio 600).

²⁴⁸ Cf. RI (evidence file, folio 1257); VF (evidence file, folio 1231); RE (evidence file, folio 1796); TC (evidence file, folio 1797), and PP (evidence file, folio 600).

²⁴⁹ Cf. RI (evidence file, folio 1256).

²⁵⁰ Who also appears as Raimundo Amaro Ferreira. Cf. RE (evidence file, folio 1746); TC (evidence file, folio 1747), and PP (evidence file, folio 600).

²⁵¹ Cf. RI (evidence file, folio 1255); RE (evidence file, folio 1798); TC (evidence file, folio 1799), and PP (evidence file, folio 600).

²⁵² Cf. RI (evidence file, folio 1255); RE (evidence file, folio 1800); TC (evidence file, folio 1801), and PP (evidence file, folio 600).

²⁵³ Cf. RI (evidence file, folio 1258); RE (evidence file, folio 1802); TC (evidence file, folio 1803), and PP (evidence file, folio 601).

²⁵⁴ Cf. RI (evidence file, folio 1254); RE (evidence file, folio 1804); TC (evidence file, folio 1805), and PP (evidence file, folio 601).

²⁵⁵ Cf. RI (evidence file, folio 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 inspection

B.1. Arguments of the parties and of the Commission

200. In its Merits Report, the **Commission** indicated that, at the time of the March 2000 inspection, 82 workers were in Hacienda Brasil Verde. According to the Commission, their names are derived from the Ministry of Labor's inspection report, from the list provided by the owner's defense counsel in the domestic proceedings, and from the list provided by the petitioners on July 10, 2007, in the procedure before the Commission.

201. Meanwhile, the **representatives** argued that, during the inspection, 85 workers were found, based on the Ministry of Labor's inspection report and the public civil action of May 30, 2000, filed by the Labor Public Prosecutor before the Labor Court of Conceição do Araguaia. They also clarified that the names indicated by the Commission as Francisco das Chagas S. Lira and Francisco das Chagas da Silva Lima refer to one and the same person, whose name is Francisco das Chagas da Silva Lira, and that the name Francisco das Chagas Da Silva Lima, should be substituted by Francisco Mariano da Silva.

202. To the contrary, the **State** argued that, of the 81 workers indicated in the March 2000 inspection report, 49 had been hired for Hacienda Brasil Verde and 32 for Hacienda San Carlos. Thus, the State considered that the only presumed victims that could be included in relation to the March 2000 inspection would be the 49 individuals who were working for Hacienda Brasil Verde.

B.2. Considerations of the Court

203. The Court has verified that Hacienda Brasil Verde and Hacienda San Carlos were contiguous and formed part of the Quagliato Group, owned by João Luiz Quagliato Neto. Thus, although, in general, the case refers to the Hacienda Brasil Verde workers, the Court has verified that the work permits of some of the presumed victims indicated that they had been hired for Hacienda San Carlos, even though they had been recruited to work in Hacienda Brasil Verde. Also, in some cases, the work contracts of the workers rescued during the March 2000 inspection mentioned both haciendas, which reinforces the idea that, in practice, they constituted a single rural property where the presumed victims in the case worked. Consequently, the Court rejects the State's argument and finds it pertinent to make this clarification regarding the connection between the two haciendas, despite the fact that, hereinafter, it will refer mainly and in general to the Hacienda Brasil Verde workers.²⁶¹

²⁵⁶ Cf. TC (evidence file, folio 1749) and PP (evidence file, folio 601).

²⁵⁷ Cf. TC (evidence file, folio 1751) and PP (evidence file, folio 601).

²⁵⁸ Cf. RI (evidence file, folio 1256); RE (evidence file, folio 1806); TC (evidence file, folio 1807), and PP (evidence file, folio 601).

²⁵⁹ Who also appears as Valdiná Veloso Silva. Cf. RI (evidence file, folio 1257); VF (evidence file, folio 1228); RE (evidence file, folio 1808); TC (evidence file, folio 1809), and PP (evidence file, folio 601).

²⁶⁰ Who also appears as Zeno Gomes Feitosa. Cf. RI (evidence file, folio 1256); VF (evidence file, folio 1227); RE (evidence file, folio 1810); TC (evidence file, folio 1811), and PP (evidence file, folio 601).

²⁶¹ Cf. Report of March 31, 2000, on the inspection of Hacienda Brasil Verde (evidence file, folios 9571 and 9573); Report of October 20, 1999, on the inspection of Hacienda Brasil Verde (evidence file, folio 7546); statement by Francisco Fabiano Leandro, received during the on-site procedure, carried out on June 6, 2016; statement by Francisco das Chagas Bastos Souza, received during the on-site procedure, carried out on June 6, 2016, and statement by Antônio Francisco da Silva, received during the on-site procedure, carried out on June 6, 2016.

204. Furthermore, the Court has verified that the three people indicated by the representatives who were additional to those on the Commission's list were: 1. Antônio Pereira dos Santos; 2. Francisco das Chagas Bastos Souza, and 3. Francisco Pereira da Silva. In addition, the Court observes that the State did not refer to the following workers indicated 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. As indicated in the preceding section, bearing in mind that, in order to decide this case, the Court must have a minimum degree of certainty about the existence of these persons²⁶² in order to prove their status as presumed victims, the Court used the following probative instruments provided by the parties: (i) Record of offenses (RI); (ii) Record of hacienda employees (RE); (iii) Contract termination document (TC); (iv) Physical Verification Form (VF), and (v) List of workers indicated by the defense counsel of the manager and the *gato* during the domestic criminal proceedings (PP).

206. Therefore, of the universe of workers present in Hacienda Brasil Verde during the March 2000 inspection, when delivering this judgment, the Court has sufficient reliable probative elements to prove the status of presumed victims of alleged violations of the prohibition of being subjected to slavery, forced labor, servitude or the slave trade and of the rights to judicial guarantees and 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 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

²⁶² Cf. *Case of the Massacres of El Mozote and neighboring places*, para. 54.

²⁶³ Cf. RI (evidence file, folio 9615); RE (evidence file, folio 607); TC (evidence file, folio 608), and PP (evidence file, folio 602).

²⁶⁴ Cf. RI (evidence file, folio 9615); RE (evidence file, folio 609); TC (evidence file, folio 610), and PP (evidence file, folio 602).

²⁶⁵ Cf. RI (evidence file, folio 9615); RE (evidence file, folio 611); TC (evidence file, folio 612), and PP (evidence file, folio 602).

²⁶⁶ Cf. RI (evidence file, folio 9615); RE (evidence file, folio 613); TC (629), and PP (evidence file, folio 602).

²⁶⁷ Cf. RI (evidence file, folio 9616); RE (evidence file, folio 614); TC (evidence file, folio 615), and PP (evidence file, folio 602).

²⁶⁸ Cf. RI (evidence file, folio 9616); RE (evidence file, folio 616); TC (evidence file, folio 617), and PP (evidence file, folio 602).

²⁶⁹ Cf. RI (evidence file, folio 9616); RE (evidence file, folio 630); TC (evidence file, folio 631), and PP (evidence file, folio 602).

²⁷⁰ Who also appears as Antônio de Paula Rodrigues de Souza. Cf. RI (evidence file, folio 9615); RE (evidence file, folio 644); TC (evidence file, folio 647), and PP (evidence file, folio 602).

²⁷¹ Cf. RI (evidence file, folio 9616); RE (evidence file, folio 634); TC (evidence file, folio 635) and PP (evidence file, folio 602).

²⁷² Cf. RI (evidence file, folio 9615); RE (evidence file, folio 636); TC (evidence file, folio 637), and PP (evidence file, folio 602).

²⁷³ Cf. RI (evidence file, folio 9615); RE (evidence file, folio 638); TC (evidence file, folio 639), and PP (evidence file, folio 602).

²⁷⁴ Who also appears as Antônio Francisco da S. Fernandes. Cf. RE (evidence file, folio 640); TC (evidence file, folio 641), and PP (evidence file, folio 602).

²⁷⁵ Cf. RI (evidence file, folio 9615); RE (evidence file, folio 642), and PP (evidence file, folio 602).

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 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

²⁷⁶ Cf. RI (evidence file, folio 9615); RE (evidence file, folio 632); TC (evidence file, folio 633), and PP (evidence file, folio 603).

²⁷⁷ Cf. RI (evidence file, folio 9616); RE (evidence file, folio 648); TC (evidence file, folio 665), and PP (evidence file, folio 603).

²⁷⁸ Cf. RI (evidence file, folio 9616).

²⁷⁹ Cf. RI (evidence file, folio 9615); RE (evidence file, folio 666); TC (evidence file, folio 667), and PP (evidence file, folio 603).

²⁸⁰ Cf. RI (evidence file, folio 9616); RE (evidence file, folio 668); TC (evidence file, folio 669), and PP (evidence file, folio 603).

²⁸¹ Who also appears as Carlos André da C. Pereira. Cf. RI (evidence file, folio 9615); RE (evidence file, folio 670); TC (evidence file, folio 671), and PP (evidence file, folio 603).

²⁸² Cf. RI (evidence file, folio 9616); RE (evidence file, folio 672); TC (evidence file, folio 673), and PP (evidence file, folio 603).

²⁸³ Cf. RI (evidence file, folio 9616); RE (evidence file, folio 674); TC (evidence file, folio 675), and PP (evidence file, folio 603).

²⁸⁴ Cf. RI (evidence file, folio 9615); RE (evidence file, folio 676); TC (evidence file, folio 677), and PP (evidence file, folio 603).

²⁸⁵ Cf. RI (evidence file, folio 9615); RE (evidence file, folio 678); TC (evidence file, folio 679), and PP (evidence file, folio 603).

²⁸⁶ Cf. RI (evidence file, folio 9616); RE (evidence file, folio 680); TC (evidence file, folio 681), and PP (evidence file, folio 603).

²⁸⁷ Cf. RI (evidence file, folio 9616); RE (evidence file, folio 682); TC (evidence file, folio 683), and PP (evidence file, folio 603).

²⁸⁸ Cf. RI (evidence file, folio 9615); RE (evidence file, folio 684); TC (evidence file, folio 685), and PP (evidence file, folio 603).

²⁸⁹ Who also appears as Francisco das Chagas A. Carvalho. Cf. RI (evidence file, folio 9616); RE (evidence file, folio 686); TC (evidence file, folio 687), and PP (evidence file, folio 603).

²⁹⁰ Cf. RI (evidence file, folio 9616) and VF (9656).

²⁹¹ Who also appears as Francisco das Chagas C. Carvalho. Cf. RI (evidence file, folio 9616); RE (evidence file, folio 688); TC (evidence file, folio 689), and PP (evidence file, folio 603).

²⁹² Who also appears as Francisco das Chagas C. Rabelo. Cf. RI (evidence file, folio 9616); RE (evidence file, folio 690); TC (evidence file, folio 691), and PP (evidence file, folio 603).

²⁹³ Who also appears as Francisco das Chagas da S. Lira and Francisco das Chagas da Silva Lima. Cf. RI (evidence file, folio 9616); RE (evidence file, folio 692), and PP (evidence file, folio 603).

²⁹⁴ Cf. RI (evidence file, folio 9616); RE (evidence file, folio 720); TC (evidence file, folio 721), and PP (evidence file, folio 603).

²⁹⁵ Cf. RI (evidence file, folio 9615); RE (evidence file, folio 694); TC (evidence file, folio 695), and PP (evidence file, folio 603).

²⁹⁶ Who also appears as Francisco das Chagas M. Alves. Cf. RI (evidence file, folio 9615); RE (evidence file, folio 696); TC (evidence file, folio 697), and PP (evidence file, folio 603).

²⁹⁷ Who also appears as Francisco das Chagas R. de Sousa. Cf. RE (evidence file, folio 698); TC (evidence file, folio 699), and PP (evidence file, folio 603).

²⁹⁸ Who also appears as Francisco das Chagas S. Cardoso. Cf. RI (evidence file, folio 9615); RE (evidence file, folio 700); TC (evidence file, folio 701), and PP (evidence file, folio 603).

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 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

²⁹⁹ Cf. RI (evidence file, folio 9615); RE (evidence file, folio 702); TC (evidence file, folio 703), and PP (evidence file, folio 603).

³⁰⁰ Cf. RI (evidence file, folio 9615); RE (evidence file, folio 704); TC (evidence file, folio 705), and PP (evidence file, folio 603).

³⁰¹ Who also appears as Francisco de Sousa Brígido. Cf. RI (evidence file, folio 9615); RE (evidence file, folio 706); TC (evidence file, folio 707), and PP (evidence file, folio 603).

³⁰² Cf. RI (evidence file, folio 9616); RE (evidence file, folio 708), and PP (evidence file, folio 603).

³⁰³ Cf. RI (evidence file, folio 9616); RE (evidence file, folio 710), and PP (evidence file, folio 603).

³⁰⁴ Cf. RI (evidence file, folio 9616); RE (evidence file, folio 712); TC (evidence file, folio 713), and PP (evidence file, folio 603).

³⁰⁵ Cf. RI (evidence file, folio 9615); RE (evidence file, folio 714); TC (evidence file, folio 715), and PP (evidence file, folio 603).

³⁰⁶ Cf. RI (evidence file, folio 9615); RE (evidence file, folio 716); TC (evidence file, folio 717), and PP (evidence file, folio 603).

³⁰⁷ Cf. RI (evidence file, folio 9616); RE (evidence file, folio 718); TC (evidence file, folio 719), and PP (evidence file, folio 603).

³⁰⁸ Cf. RI (evidence file, folio 9615); RE (evidence file, folio 722); TC (evidence file, folio 723), and PP (evidence file, folio 603).

³⁰⁹ Cf. RI (evidence file, folio 9616), and VF (f. 9699).

³¹⁰ Cf. RI (evidence file, folio 9616); RE (evidence file, folio 724); TC (evidence file, folio 725), and PP (evidence file, folio 603).

³¹¹ Cf. RI (evidence file, folio 9615); RE (evidence file, folio 726); TC (evidence file, folio 727), and PP (evidence file, folio 603).

³¹² Cf. RI (evidence file, folio 9616); RE (evidence file, folio 728); TC (evidence file, folio 729), and PP (evidence file, folio 603).

³¹³ Cf. RI (evidence file, folio 9615); RE (evidence file, folio 730); TC (evidence file, folio 731), and PP (evidence file, folio 603).

³¹⁴ Who also appears as Gonçalo Firmino de Souza. Cf. RI (evidence file, folio 9616); RE (evidence file, folio 732); TC (evidence file, folio 733), and PP (evidence file, folio 603).

³¹⁵ Cf. RI (evidence file, folio 9616); RE (evidence file, folio 734); TC (evidence file, folio 735), and PP (evidence file, folio 603).

³¹⁶ Cf. RE (evidence file, folio 736); TC (evidence file, folio 737), and PP (evidence file, folio 603).

³¹⁷ Who also appears as Jenival Lopes. Cf. RI (evidence file, folio 9615); RE (evidence file, folio 738); TC (evidence file, folio 739), and PP (evidence file, folio 603).

³¹⁸ Cf. RI (evidence file, folio 9615); RE (evidence file, folio 740); TC (evidence file, folio 741), and PP (evidence file, folio 603).

³¹⁹ Cf. RI (evidence file, folio 9615); RE (evidence file, folio 742); TC (evidence file, folio 743), and PP (evidence file, folio 603).

³²⁰ Who also appears as José de Deus de Jesus Souza. Cf. RI (evidence file, folio 9616); RE (evidence file, folio 744); TC (evidence file, folio 745), and PP (evidence file, folio 603).

³²¹ Who also appears as José de Ribamar Souza. Cf. RI (evidence file, folio 9615); RE (evidence file, folio 746); TC (evidence file, folio 747), and PP (evidence file, folio 603).

³²² Cf. RI (evidence file, folio 9616); RE (evidence file, folio 748); TC (evidence file, folio 749), and PP (evidence file, folio 604).

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 Silva;³⁴³ 82. Sebastião Pereira de Sousa Neto;³⁴⁴ 83. Silvestre Moreira de Castro Filho;³⁴⁵ 84. Valdir Gonçalves da Silva³⁴⁶ and 85. Vicentina Maria da Conceição³⁴⁷.

³²³ Cf. RI (evidence file, folio 9616); RE (evidence file, folio 750); TC (evidence file, folio 751), and PP (evidence file, folio 604).

³²⁴ Cf. RI (evidence file, folio 9615); RE (evidence file, folio 752); TC (evidence file, folio 753), and PP (evidence file, folio 604).

³²⁵ Cf. RI (evidence file, folio 9615); RE (evidence file, folio 754); TC (evidence file, folio 755), and PP (evidence file, folio 604).

³²⁶ Cf. RI (evidence file, folio 9616); RE (evidence file, folio 756); TC (evidence file, folio 757), and PP (evidence file, folio 604).

³²⁷ Cf. RI (evidence file, folio 9616); RE (evidence file, folio 758); TC (evidence file, folio 759), and PP (evidence file, folio 604).

³²⁸ Cf. RI (evidence file, folio 9616); RE (evidence file, folio 760); TC (evidence file, folio 761), and PP (evidence file, folio 604).

³²⁹ Cf. RI (evidence file, folio 9615); RE (evidence file, folio 762), and PP (evidence file, folio 604).

³³⁰ Cf. RI (evidence file, folio 9616); RE (evidence file, folio 764), and PP (evidence file, folio 604);

³³¹ Cf. RI (evidence file, folio 9616); RE (evidence file, folio 766); TC (evidence file, folio 767), and PP (evidence file, folio 604).

³³² Cf. RI (evidence file, folio 9615); RE (evidence file, folio 768); TC (evidence file, folio 769), and PP (evidence file, folio 604).

³³³ Cf. RI (evidence file, folio 9615); RE (evidence file, folio 770); TC (evidence file, folio 771), and PP (evidence file, folio 604).

³³⁴ Cf. RI (evidence file, folio 9615); RE (evidence file, folio 772); TC (evidence file, folio 773), and PP (evidence file, folio 604).

³³⁵ Cf. RI (evidence file, folio 9616); RE (evidence file, folio 774); TC (evidence file, folio 775), and PP (evidence file, folio 604).

³³⁶ Cf. RE (evidence file, folio 776); TC (evidence file, folio 777), and PP (evidence file, folio 604).

³³⁷ Cf. RI (evidence file, folio 9615); RE (evidence file, folio 778); TC (evidence file, folio 779), and PP (evidence file, folio 604).

³³⁸ Cf. RI (evidence file, folio 9615); RE (evidence file, folio 780); TC (evidence file, folio 781), and PP (evidence file, folio 604).

³³⁹ Cf. RI (evidence file, folio 9615); RE (evidence file, folio 782); TC (evidence file, folio 783), and PP (evidence file, folio 604).

³⁴⁰ Cf. RI (evidence file, folio 9615); RE (evidence file, folio 784); TC (evidence file, folio 785), and PP (evidence file, folio 604).

³⁴¹ Cf. RI (evidence file, folio 9616); RE (evidence file, folio 786); TC (evidence file, folio 787), and PP (evidence file, folio 604).

³⁴² Cf. RI (evidence file, folio 9615); RE (evidence file, folio 788); TC (evidence file, folio 789), and PP (evidence file, folio 604).

³⁴³ Cf. RI (evidence file, folio 9615); RE (evidence file, folio 790); TC (evidence file, folio 791), and PP (evidence file, folio 604).

³⁴⁴ Who also appears as Sebastião Pereira de Souza or Sebastião Pereira de S. Neto. Cf. RI (evidence file, folio 9615); RE (evidence file, folio 792); TC (evidence file, folio 793), and PP (evidence file, folio 604).

³⁴⁵ Who also appears as Silvestre Moreira de C. Filho. Cf. RI (evidence file, folio 9616); RE (evidence file, folio 794); TC (evidence file, folio 795), and PP (evidence file, folio 604).

³⁴⁶ Cf. RI (evidence file, folio 9616); RE (evidence file, folio 796); TC (evidence file, folio 797), and PP (evidence file, folio 604).

207. Based on the above, the Court will consider the persons indicated in paragraphs 199 and 206 of this judgment to be presumed victims.

VIII MERITS

VIII-1

PROHIBITION OF SLAVERY, SERVITUDE, FORCED LABOR AND THE SLAVE TRADE AND TRAFFIC IN WOMEN,³⁴⁸ THE RIGHTS TO PERSONAL INTEGRITY, PERSONAL LIBERTY, RECOGNITION OF JURIDICAL PERSONALITY, FREEDOM OF MOVEMENT AND RESIDENCE,³⁴⁹ AND THE RIGHTS OF THE CHILD³⁵⁰

208. In this chapter the Court will set out the arguments of the Commission, the representatives of the presumed victims, and the State on the alleged violations of the prohibition of slavery, servitude, trafficking and forced labor, and of the rights to personal integrity, personal liberty, juridical personality, honor and dignity, and freedom of movement and residence, established in Articles 6, 5, 7, 3, 11 and 22 of the American Convention. The Court will then analyze the merits of: (i) the scope of Article 6 of the American Convention pursuant to international human rights law and the definitions of slavery, forced labor, servitude and trafficking in persons; (ii) the application of the said article to the facts of this case, and (iii) the alleged responsibility of the State in relation to the foregoing.

A. Arguments of the parties and of the Commission

209. The **Commission** indicated that international law prohibits slavery, servitude, forced labor and other practices similar to slavery. The prohibition of slavery and similar practices forms part of customary international law and *jus cogens*. Protection against slavery is an obligation *erga omnes* which States must comply with and that is derived from international human rights law. The absolute and irrevocable prohibition against subjecting someone to

³⁴⁷ Who is also named as Vicentina Mariana da Conceição Silva. Cf. RI (evidence file, folio 9616); RE (evidence file, folio 798); TC (evidence file, folio 799), and PP (evidence file, folio 604).

³⁴⁸ Article 6 of the Convention establishes 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 at 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 juridical person;
 - 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.

³⁴⁹ The relevant part of Article 22 of the Convention stipulates that:

1. 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 establishes 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.

slavery, servitude or forced labor is also recognized in the American Convention and in other international instruments to which Brazil is a party.

210. The Commission included clarifications with regard to the above concepts. First, it asserted that slavery, according to the 1926 Convention to Suppress the Slave Trade and Slavery (hereinafter the "1926 Convention") should be understood as an exercise of the powers attaching to the right of ownership of a person. Second, it indicated that the contemporary concept of slavery includes debt bondage as a practice similar to slavery and, therefore, prohibited by the American Convention. The elements of debt bondage are: (i) provision of services as guarantee for a debt that, nevertheless, are not allocated to its payment; (ii) absence of limits to the duration of the services; (iii) failure to define the nature of the services; (iv) that the persons live on the property where they provide the services; (v) control over the movements of these persons; (vi) existence of measures to prevent escapes; (vii) psychological control of the individual; (viii) the victims are unable to change their circumstances, and (ix) cruel and abusive treatment.

211. The Commission also indicated that forced labor refers to those services provided under threat of punishment, and that are provided unwillingly by the victims. It added that the fact that payment is received in exchange for the services does not prevent them from being classified as servitude or forced labor. Lastly, the Commission asserted that there is a close relationship between the different abusive practices such as forced labor, slavery, debt bondage, trafficking³⁵¹ and labor exploitation. The interrelationship between these conducts supposes that one and the same act can be classified under different concepts and that they are never mutually exclusive.

212. The Commission stated that the testimony of the rescued workers and the other evidence provided³⁵² reveal that, in Hacienda Brasil Verde: (i) the workers who wanted to leave the hacienda were subjected to death threats; (ii) the workers were prevented from leaving the property freely; (iii) there were no salaries or these were derisory; (iv) workers were indebted to the owner of the hacienda, and (v) the conditions of housing, health and alimentation were appalling. On this basis, the Commission concluded that the hacienda owner and foremen used the workers as if they owned them.

213. In addition, the Commission indicated that debt bondage existed in this case. The workers acquired huge debts with the *gatos* and the hacienda foremen for their transfer, food and other items. Since they received little or no wages, it was almost impossible to pay off the debt and, until it was paid, the workers could not leave the hacienda. The Commission also considered that the case involved forced labor because the services were provided under threat of violence and against the will of the workers. It indicated that, although the workers initially agreed to work voluntarily, this agreement was obtained based on false promises and they were unable to leave the hacienda when they discovered the real working conditions.

214. The Commission asserted that the Brazilian State was aware of the phenomenon of slave labor in its territory long before the events of this case. Moreover, not only did the State know about the problem in general terms, but it was very well aware of the situation in Hacienda Brasil Verde. The Commission indicated that, even though the 1989 and 1997

³⁵¹ The Commission did not include in persons in its Admissibility and Merits Report because the issue was not discussed while it was processing the case. However, in its final observations, it indicated that since the issue had been discussed during the processing of the case before the Court, it would be possible to classify some conducts as trafficking.

³⁵² Inspection of March 15, 2000, Report of March 31, 2000 (evidence file, folio 9571) and Public civil action of May 30, 2000 (evidence file, folio 1049).

inspections fall outside the Court's competence, they should be taken into account as the context of what happened in the hacienda and of the State's knowledge of the situation. In the Commission's opinion, all the requirements are fulfilled for declaring Brazil's responsibility by omission; namely: (i) the existence of a real and imminent risk; (ii) the State's knowledge of this risk; (iii) the special situation of the individuals affected, and (iv) the reasonable possibilities of prevention.

215. The Commission recognized the efforts that Brazil had made to combat slave labor; however, it stressed that all the relevant measures were taken after 2003. In particular, the Commission argued that there is no evidence that Brazil had taken any measure to prevent and protect the victims in this specific case from 1998 to 2000. It underlined, for example: (i) the infrequency of the inspections despite the serious deficiencies found previously; (ii) the inadequacy of the verification, collection and recording of evidence during the inspections, and (iii) the absence of short- and medium-term consequences following the inspections.

216. Lastly, the Commission indicated that the facts of this case "reveal *de facto* discrimination against a specific group of people who have been marginalized from the enjoyment of the rights examined." The Commission also considered that the State had "not adopted sufficient and effective measures to ensure, without discrimination, the rights of the workers found in the 1993, 1996, 1997 and 2000 inspections."

217. In conclusion, the Commission argued that Brazil was internationally responsible for the violation of Article 6 of the American Convention, in relation to Articles 5, 7, 22 and 1(1) of this instrument, with regard to the Hacienda Brasil Verde workers identified in the 2000 inspection.³⁵³ In addition, it considered that the State had not taken sufficient and effective measures to ensure, without discrimination, the rights of the said workers in accordance with Article 1(1) of the Convention in relation to the rights recognized in Articles 5, 6, 7 and 22 of this instrument.

218. The **representatives** indicated that the prohibition of slave labor was a *jus cogens* obligation under international law and was also *erga omnes* in nature. They added that it was not possible to enumerate all contemporary forms of slavery, but these incorporated four fundamental elements: (i) control over other persons; (ii) the employers' ownership of his workforce; (iii) use of violence or threat of use of violence, and (iv) discrimination that resulted in the dehumanization of those subjected to slavery.

219. The representatives asserted that Article 6 of the American Convention included four closely related concepts: slavery, servitude, forced labor and trafficking. They added that those four categories constituted the broadest concept of contemporary forms of slavery. Furthermore, although servitude, forced labor and trafficking were violations in themselves, they were also manifestations of contemporary forms of slavery.

220. The representatives indicated that, according to the 1926 Convention and the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery of 1956 (hereinafter "the 1956 Convention"), slavery referred to the exercise of any or all of the powers attaching to the right of ownership over another person; in other words, the powers to use, possess or dispose of another human being. Regarding forced labor, the representatives indicated that, in the *case of the Ituango*

³⁵³ In its Admissibility and Merits Report, the Commission argued this violation in relation to the workers identified in the 1993, 1996, 1997 and 2000 inspections. However, owing to the Court's temporal competence and the Commission's brief submitting the case, the Court will only take the argument into account in relation to the 2000 inspection.

Massacres, the Court had identified the two main elements: (i) threat of punishment, and (ii) unwillingness to do the work. Lastly, trafficking referred to the slave trade or the conveyance of slaves.

221. The representatives argued that numerous indicators facilitated the identification of contemporary forms of slavery. They included: (i) recruitment, by means of false promises or deception; (ii) conveyance of persons for exploitation purposes; (iii) abuse of a position of vulnerability; (iv) control or restriction of freedom of movement; (v) control of personal property; (vi) retention of identification papers; (vii) intimidation or threats; (viii) physical or sexual violence; (ix) cruel or humiliating treatment; (x) paltry salaries and their retention; (xi) debt bondage; (xii) excessive working hours; (xiii) obligation to live in the place of work; (xiv) existence of measures to prevent workers leaving; (xv) unwillingness to begin or to continue working; (xvi) absence of informed consent to the working conditions, and (xvii) impossibility of changing the worker's situation freely.

222. The representatives argued that, in the instant case, a situation of slavery had been constituted in Hacienda Brasil Verde, in its contemporary and similar forms. In their opinion, this conclusion was revealed by the following facts: (i) the workers were recruited by *gatos* to be exploited for labor; (ii) the workers' consent to travel to Hacienda Brasil Verde was flawed, because they had no real knowledge of what their salary and their working conditions would be; (iii) the hacienda manager retained and, at times, altered the [work permits]; (iv) the workers were obliged to sign different types of work contracts and blank documents, although most of them were illiterate; (v) the debts contracted by the workers with the *gatos* for transport and salary advances; (vi) the workers had to pay the hacienda for their tools, personal hygiene items and food at inflated prices; (vii) the workers could not leave the hacienda if they still had debts; (viii) the working day lasted more than 12 hours; (ix) the working conditions were unacceptable, with unhealthy and insufficient food, and with no health care; (x) the hacienda had armed guards who prevented the workers from leaving; (xi) workers who expressed a wish to leave the hacienda were threatened and beaten, and (xii) the workers were obliged to live at the hacienda.

223. Furthermore, the representatives considered that, owing to the fraudulently imposed debts and the armed guards, the workers were deprived of their liberty. The threats and beatings represented a risk to the life and physical integrity of the workers. In addition, the execrable working conditions violated their honor and dignity. Lastly, the situation prevented the workers from freely developing their life project, and negated their right to recognition of juridical personality. Consequently, owing to the complex nature of slavery, servitude and trafficking in persons, which involved multiple offenses, they indicated that the rights to recognition of juridical personality (Article 3 of the American Convention), personal integrity (Article 5), personal liberty and safety (Article 7), dignity and privacy (Article 11), and freedom of movement and residence (Article 22) had been violated, in addition to the prohibition of discrimination.

224. The representatives indicated that a situation of trafficking in persons had also been constituted in this case. All the elements required to constitute trafficking as defined in the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children were met in Hacienda Brasil Verde; this included the transportation and transfer of workers by means of deception and fraud for the purposes of exploiting their labor.

225. According to the representatives, in Brazil, the practice of slave labor was structural in nature and had been tolerated by the State. They added that the facts of this case had taken place in this general context and, therefore, the Court should establish certain

assumptions and invert the burden of proof. They also argued that certain evidentiary shortcomings in the case were due, precisely, to the State's lack of diligence when inspecting and investigating the hacienda.

226. Regarding the State's responsibility for human rights violations committed by private individuals, the representatives agreed with the arguments of the Inter-American Commission. Specifically, they argued that, in this case, most of the victims were poor men, between 17 and 40 years of age, Afrodescendant and mulatto, from extremely poor states such as Piauí, where they lived in conditions of extreme poverty and vulnerability. This situation allegedly corresponded to "structural discrimination." Thus, according to the representatives, "the Brazilian State failed to comply with its obligation to take effective steps to eliminate the practice of forced labor, trafficking in persons and debt bondage, and to remove the obstacles to access to justice based on the victims' origin, ethnicity, race and economic status, which permitted the subsistence of factors of structural discrimination that facilitated the subjection of the Hacienda Brasil Verde workers to trafficking, slavery and forced labor." Accordingly, the representatives asked the Court to declare the violation of Article 6 of the American Convention, in relation, *inter alia*, to Article 1(1) of this instrument. Subsequently, in their final written arguments, they also asked the Court to declare the violation of Article 24 of the Convention.

227. The representatives concluded that Brazil was internationally responsible for failing to comply with its obligation to ensure the prohibition of slavery contained in Article 6 of the American Convention, in relation to the rights to juridical personality, personal integrity, personal liberty and safety, honor, dignity, privacy, and freedom of movement and residence (Articles 3, 5, 7, 11 and 22 of the Convention) with regard to all those who worked in Hacienda Brasil Verde following the date on which Brazil accepted the jurisdiction of the Court. This responsibility was aggravated owing to the discriminatory nature of the violations, and also the presence of victims who were under 18 years of age.

228. The **State** indicated that a clear distinction should be made between the concepts of slavery, servitude and forced labor. Although the concepts were related and were all prohibited by Article 6 of the American Convention, they retained their legal individuality and had varying degrees of gravity and, therefore, should have differentiated penalties in the case of international responsibility. In Brazil's opinion, confusion should be avoided between the different types of human exploitation, because that would trivialize slavery and make it difficult to eliminate it. Likewise, the State argued that the Court should merely analyze slavery, servitude and forced labor in keeping with international law and not according to Brazil's domestic law, which included a broader definition of those concepts without differentiating between them adequately.

229. The State also indicated that the prohibition of slave labor was an obligation *erga omnes* of *jus cogens* status. Nevertheless, those characteristics were insufficient to determine the content of the above-mentioned norms.

230. Regarding forced labor, the State indicated that, according to Convention No. 29 of the International Labour Organization (ILO), this included: (i) all work or service exacted under the menace of any penalty, and (ii) for which a person has not offered himself voluntarily. It also indicated that, in the *case of the Ituango Massacres*, the Court had added as an additional requirement that the violation could be attributed to the State. According to Brazil, a simple omission was not sufficient; rather, there had to be a State conduct indicating the intention to participate in the violation of the right, or at least facilitate it.

231. Furthermore, the State distinguished between servitude as such, and debt bondage. It argued that the elements of the former were that: (i) the obligatory work was performed on land belonging to another; (ii) the services were not provided voluntarily, and (iii) the obligation was based on law, custom or agreement. The threat of violence was also implicit. Meanwhile, the elements of debt bondage were that: (i) the work was demanded as guarantee for the payment of a debt; (ii) the work was assumed voluntarily; (iii) the value of the work was insufficient to pay off the debt; (iv) the duration of the work was indefinite, and (v) the nature of the services was indeterminate.

232. The State indicated that, according to the 1926 Convention, slavery referred to the "status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised." Based on the fact that, legally, slavery had been abolished in almost all the world, the exercise of such powers would be a factual matter. Thus, the determination of the presence of slave labor would always depend on the specific case. Nevertheless, Brazil argued that the Court should focus on the domestic element of slavery; in other words, on its definition as the exercise of ownership of a person, more than on indications, external or merely contextual elements, as claimed by the representatives.

233. The State indicated that, in the instant case, there was no evidence that slavery, forced labor or servitude occurred in Hacienda Brasil Verde following Brazil's acceptance of the Court's jurisdiction. It argued that the March 2000 inspection had concluded that the Hacienda Brasil Verde workers were in a situation that jeopardized their health and their physical integrity and, therefore, rescued them. This inspection verified degrading working conditions and numerous violations of labor rights under the laws of Brazil, and that was sufficient to justify their rescue. However, at that time, it did not find any deprivation of liberty, or the exercise of any of the powers attaching to the right of ownership of the rescued workers. The State indicated that this situation could possibly have been an offense under article 149 of the Brazilian Penal Code, but could never have been characterized as slavery, servitude or forced labor as understood under the relevant rules of international human rights law. The State stressed that the mere fact of the rescue of the workers was not sufficient to justify a violation of the American Convention, because the laws of Brazil also established this measure for less serious situations.

234. The State asserted that both the inspection and the dismissals that occurred over the eight months prior to the March 2000 inspection revealed that the workers provided their services in precarious and temporary conditions, and with a high rotation, which was usual in rural activities in the state of Pará. It added that there had been no impediment for the workers to abandon their work in the hacienda and that there was no indication of armed guards at the said hacienda.

235. Brazil argued that the representatives and the Commission had the burden of proving that the Hacienda Brasil Verde workers had been subject to some of the attributes of the right of ownership, that they had been deprived of their liberty or subjected to unpayable debts. In the State's opinion, the representatives and the Commission had not been able to prove the foregoing. In particular, the State argued that evidence contemporary with the facts, such as the inspection reports, should be given preference, rather than the testimonial evidence provided during the current proceedings because, owing to the time that has passed, the testimony was imprecise and contradictory.

236. The State denied that the evidence on which the representatives justified their arguments was sufficient to prove the presence of slave labor. In particular, Brazil asserted that: (i) indefinite contracts were a usual practice that was more advantageous for the workers under the laws of Brazil; (ii) the purpose of the signature of blank contracts was to

defraud the workers, paying them less than was legally required, but it did not affect their personal liberty, and (iii) working in degrading conditions did not constitute a violation of Article 6 of the American Convention. It added that, in the following inspection, in May 2002, the situation of the hacienda's workers was satisfactory and it only resulted in fines being imposed for minor infractions of labor laws.

237. The State indicated that it could not be held responsible for every violation of human rights committed by private individuals in its territory. To the contrary, this would entail a presumption of the State's international responsibility. Brazil argued that there was no evidence of the participation or acquiescence of state agents in this case, as required by the Court's case law. In its opinion, the representatives should have proved specific violations of Articles 1(1) and 2 of the American Convention with regard to duly represented victims that fell within the Court's jurisdiction based on its temporal and material limitations. The State indicated that there was no evidence of any connection between State agents and Hacienda Brasil Verde. It also asserted that the possible shortcomings in the investigation and prosecution of slave labor were not sufficient to declare that it had failed to comply with its obligation of guarantor under the inter-American system.

238. The State indicated that it had complied with all the international standards for the prevention and eradication of slave labor. In particular, it underscored a series of public policies implemented since 2000 aimed at: (i) training, assistance and information for vulnerable people; (ii) raising awareness and commitment among employers; (iii) reinforcing inspection services and the investigation of slave labor, and (iv) protection against abusive and fraudulent hiring practices.

239. Based on the above, the State asked the Court to declare that the requests to recognize the existence of slave labor, servitude or forced labor in this case were inadmissible and to determine that Brazil had not violated Article 6 of the Convention.

B. Considerations of the Court

240. In this section, the Court will include considerations on the alleged violations of the different provisions of Article 6 of the American Convention regarding the prohibition of slavery, servitude, forced labor and trafficking. To this end, the Court: (i) will analyze the evolution of these concepts in international law, in order to (ii) determine the content of the provisions of Article 6 of the American Convention; and then (iii) verify whether the facts of this case represent violations of the American Convention on Human Rights.

241. Article 6 of the American Convention stipulates that:

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 at 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 juridical person;
 - 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 only take into consideration paragraphs 1 (slavery, servitude and the slave trade and traffic in women) and 2 (forced labor) of Article 6 of the Convention, which refer to the issues that are the purpose of the dispute in this case. Accordingly, the Court will first analyze each of the above concepts.

243. The right not to be subject to slavery, servitude, forced labor or the slave trade and traffic in women has an absolute nature in the American Convention. According to Article 27(2) of this treaty, it is one of the core of non-derogable rights, because it cannot be suspended in case of war, public danger, or other threat.

244. As this is the first contentious case before the Inter-American Court that is substantially related to Article 6(1),³⁵⁴ the Court will provide a brief summary of the evolution of the matter in international law to give content to the concepts of slavery, servitude, the slave trade and traffic in women, and forced labor prohibited by the American Convention, in light of the general rules of interpretation established in Article 29 of the Convention.³⁵⁵

245. On other occasions, both this Court³⁵⁶ and the European Court of Human Rights³⁵⁷ (hereinafter "the ECHR") have indicated that human rights treaties are living instruments, the interpretation of which must evolve with the times and current living conditions. This evolutive interpretation is consequent with the general rules of interpretation recognized in Article 29 of the American Convention, as well as those established by the Vienna Convention on the Law of Treaties.

246. In this regard, the Court has affirmed that, when interpreting a treaty, not only should the agreements and instruments formally related to it be taken into account (second paragraph of Article 31 of the Vienna Convention), but also the system within which it is inserted (third paragraph of Article 31 of this Convention).³⁵⁸ Thus, in order to issue an opinion on the interpretation of the legal provisions in question, the Court will have recourse to the Vienna Convention on the Law of Treaties, which establishes the general and customary rules for the interpretation of international treaties,³⁵⁹ which entails the simultaneous and joint application of good faith, the ordinary meaning to be given to the terms of the treaty in their context, and the object and purpose of the treaty. Accordingly,

³⁵⁴ In the *Case of the Río Negro Massacres v. Guatemala*, the Court ruled on the violation of the prohibition of servitude. However, in that case, the State acknowledged its international responsibility with regard to that violation, among others.

³⁵⁵ In this regard, the Court points out that the preparatory work of the American Convention on Human Rights does not provide a specific interpretation of the scope of the prohibition established in Article 6 of this instrument.

³⁵⁶ Cf. *The Right to Information on Consular Assistance within the Framework of the Guarantees of Due Process of Law*. Advisory Opinion OC-16/99 of October 14, 1999. Series A No. 16, para. 114; and *Case of Artavia Murillo et al. ("In vitro fertilization") v. Costa Rica*. Preliminary objections, merits, reparations and costs Judgment of November 28, 2012. Series C No. 257, para. 245.

³⁵⁷ Cf. *Case of the Ituango Massacres*, para. 144. See also, ECHR, *Case of Tyrer v. The United Kingdom*, No. 5856/72, Judgment of April 25, 1978, para. 31.

³⁵⁸ Cf. *Case of the Ituango Massacres*, para. 156. Similarly, *The Right to Information on Consular Assistance within the Framework of the Guarantees of Due Process of Law*, para. 113, and *Case of Artavia Murillo et al. ("In vitro fertilization")*, para. 191.

³⁵⁹ Cf. International Court of Justice, *Case concerning sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)*, Judgment of December 17, 2002, para. 37, and International Court of Justice, *Case of Avena and Other Mexican Nationals (Mexico v. the United States of America)*, Judgment of March 31, 2004, para. 83.

the Court will use the methods of interpretation stipulated in Articles 31³⁶⁰ and 32³⁶¹ of the Vienna Convention to make this interpretation.³⁶²

247. In this case, when analyzing the scope of Article 6 of the American Convention, the Court has found it useful and appropriate to use other international treaties, in addition to the Convention, to interpret its provisions in keeping with the evolution of the inter-American system, taking into consideration the corresponding evolution in the different branches of international law, particularly international human rights law.³⁶³

B.1. The evolution of the prohibition of slavery, servitude, forced labor and practices similar to slavery in international law

248. The universal elimination of the practice of slavery began in the eighteenth century, when several national courts declared this practice unacceptable. Despite various bilateral and multilateral initiatives to prohibit slavery in the nineteenth century, the first universal treaty on the matter was the Slavery Convention signed at Geneva on September 25, 1926, under the auspices of the League of Nations. The Convention stipulated that:

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 the 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 of Legal Entities to hold Rights under the Inter-American System of Human Rights (Interpretation and scope 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 of Article 8(1)A and B of the Protocol of San Salvador)*. Advisory Opinion OC-22/16 of February 26, 2016. Series A No. 22, para. 35.

³⁶³ In this regard, the Court has indicated that the *corpus juris* of international human rights law comprises a series of international instruments with varied content and juridical effects (treaties, conventions, resolutions and declarations). Its dynamic evolution has had a positive impact on international law, in affirming and building up the latter's faculty for regulating relations between States and the human beings subject to their respective jurisdictions. This Court, therefore, must adopt the appropriate approach to consider this question in the context of the evolution of the fundamental rights of the human person in contemporary international law. *Cf. The Right to Information on Consular Assistance within the Framework of the Guarantees of Due Process of Law*, para. 115; and *Case of the Ituango Massacres*, 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. Since then, several international treaties have reiterated the prohibition of slavery,³⁶⁴ which is considered a peremptory rule of international law (*jus cogens*),³⁶⁵ and entails obligations *erga omnes* according to the International Court of Justice.³⁶⁶ In the instant case, all the parties have expressly recognized this international legal status of the prohibition of slavery. In addition, both Brazil and most States in the region³⁶⁷ are parties to the 1926 Slavery Convention and the Supplementary Convention on the Abolition of Slavery of 1956.

250. The Supplementary Convention on the Abolition of Slavery of 1956,³⁶⁸ expanded the definition of slavery by including “institutions and practices similar to slavery” such as debt bondage and serfdom, among others, within the absolute prohibition of slavery.³⁶⁹

³⁶⁴ For example, Universal Declaration of Human Rights, 1948, Art. 4; Supplementary Convention on the Abolition of Slavery, 1956, Art. 1; International Covenant on Civil and Political Rights, 1966, Art. 8; European Convention on Human Rights, 1950, Art. 4; Rome Statute of the International Criminal Court, 1998, Art. 7; Convention No. 182 of the International Labour Organization, 1999, Art. 3; African Charter on Human and Peoples’ Rights, 1981, Art. 5; American Convention on Human Rights, 1969, Art. 6.

³⁶⁵ See, *inter alia*, expert opinion of Allain at the public hearing

³⁶⁶ Cf. *Case of the Río Negro Massacres*, para. 141, and International Court of Justice, *Case of Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)*, Judgment of February 5, 1970, para. 34.

³⁶⁷ Cf. Countries that have signed the 1926 Slavery Convention and its Protocol: Antigua and Barbuda, Bahamas, Barbados, Bolivia, Brazil, Canada, Chile, Cuba, Dominica, Ecuador, Guatemala, Jamaica, Mexico, Nicaragua, Paraguay, Santa Lucia, San Vincent and the Grenadines, Trinidad and Tobago, United States of America and Uruguay. Available at: <https://treaties.un.org/Pages/showDetails.aspx?objid=0800000280030bab>; and countries of the region that have signed the Supplementary Convention on the Abolition of Slavery of 1956: Antigua and Barbuda, Argentina, Bahamas, Barbados, Bolivia, Brazil, Canada, Chile, Cuba, Dominica, Dominican Republic, Guatemala, Haiti, Jamaica, Mexico, Nicaragua, Paraguay, Santa Lucia, San Vincent and the Grenadines, Trinidad and Tobago, United States of America and Uruguay. Available at: <https://treaties.un.org/Pages/showDetails.aspx?objid=080000028003103d>.

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 Slavery Convention signed at Geneva on 25 September 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 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;

(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;

251. In the sphere of international human rights law, Article 4 of the 1948 Universal Declaration of Human Rights establishes 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 Article 8(1) and 8(2) of the 1966 International Covenant on Civil and Political Rights stipulates 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. At the regional level, Article 4 of the 1950 European Convention on Human Rights establishes the prohibition of slavery, servitude and forced labor in general.³⁷² Meanwhile, the 1981 African Charter on Human and Peoples’ Rights prohibits slavery together with other forms of exploitation and degradation of man, such as the slave trade, torture, cruel, inhuman or degrading punishment and treatment .³⁷³

253. The International Labour Organization (ILO) also refers to the prohibition of slavery and similar practices in its Convention No. 182 of 1999, concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.³⁷⁴ The ILO also refers expressly to the Supplementary Convention of 1956 when considering that “all necessary measures shall be taken to prevent compulsory or forced labour from developing into conditions analogous to slavery.”³⁷⁵

254. In addition to the regional and universal treaties mentioned above, other relevant legal documents from different branches of international law reflect the prohibition of slavery and similar practices. In the case of the post-war international tribunals, the Charters of the 1945 International Military Tribunal of Nuremberg,³⁷⁶ and of the 1946 International Military Tribunal of Tokyo³⁷⁷ prohibit slavery as a crime against humanity.

(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.

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 Slavery Convention of 1926, 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” means a 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 of Human Rights, Article 4: “No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.”

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 labour. [...]”

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 labour.”

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.”

³⁷⁴ ILO, Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, Article 3: “For the purposes of this Convention, the term “the worst forms of child labour” 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 labour, including forced or compulsory recruitment of children for use in armed conflict; [...]”

³⁷⁵ ILO, Convention No. 105 Abolition of Forced Labour Convention, 1957, Preamble.

³⁷⁶ Charter of the International Military Tribunal of Nuremberg, October 6, 1945, Article 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

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

256. Slavery has also been included as a crime against humanity over which the international criminal courts have jurisdiction. Thus, the Statute of the *Ad hoc* International Criminal Tribunal for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the Former Yugoslavia since 1991 (hereinafter "the *Ad hoc* International Criminal Tribunal for the former Yugoslavia" or "the ICTY") of 1993, establishes enslavement as a crime against humanity (Article 5.c).³⁷⁹ The Statutes of the International Tribunal for Rwanda, of 1994, and the Special Court for Sierra Leone, of 2000, include "enslavement" as a crime against humanity in their articles 3.c and 2.c, respectively.³⁸⁰ Lastly, the 1998 Rome Statute of the International Criminal Court defines enslavement as "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."³⁸¹

257. More recently, both the Draft Code of Crimes against the Peace and Security of Mankind adopted in 1996 by the International Law Commission (Article 18.d),³⁸² and the subsequent draft articles on crimes against humanity adopted provisionally in 2015, also by

interests of the European Axis countries, whether as individuals or as members of organisations, 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 against 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 Far East (Tokyo International Military Tribunal), 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 of the foregoing crimes are responsible for all acts performed by any person in execution of such plan."

³⁷⁸ Protocol II Additional to the 1949 Geneva Conventions and Relating to the Protection of Victims of Non-International Armed Conflicts, 1977, Article 4.2.f. Available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolII.aspx>.

³⁷⁹ Statute of the Ad hoc International Criminal Tribunal for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the Former Yugoslavia since 1991. Available at: http://www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf.

³⁸⁰ Statute of the International Tribunal for Rwanda, art. 3.c. Available http://legal.un.org/avl/pdf/ha/ictr_FF.pdf.

Statute of the Special Court for Sierra Leone, art. 2.c. Available at: <http://www.rscsl.org/Documents/scsl-statute.pdf>.

³⁸¹ 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 systematic 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 at: http://legal.un.org/docs/?path=../ilc/texts/instruments/english/draft_articles/7_4_1996.pdf&lang=EF.

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 a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children” (Article 3.2.c).³⁸³

258. The Court will now review the interpretation of the definition of slavery and similar forms, by different international courts that have had the occasion to rule on this crime; as well as its development by the International Labour Organization and the relevant United Nations specialized agencies.

B.2. International tribunals and quasi-judicial bodies

259. In its historic decision in the case of the *Prosecutor v. Kunarac*,³⁸⁴ the Appeals Chamber of the *Ad hoc* International Criminal Tribunal for the former Yugoslavia defined enslavement 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, in its original judgment, the *Ad hoc* International Criminal Tribunal for the former Yugoslavia established the following criteria to determine the existence of a situation of enslavement or reduction to servitude: (a) the restriction or control of an individual’s autonomy, freedom of choice or freedom of movement; (b) the accruing of some gain to the perpetrator; (c) the consent or free will of the victim is absent or is rendered impossible or irrelevant by, for example, the threat or use of force or other forms of coercion, the fear of violence, deception or false promises; (d) the abuse of power; (e) the victim’s position of vulnerability; (f) detention or captivity, and (g) psychological oppression or socio-economic conditions. Further indications of enslavement include (h) exploitation; (i) the exaction of forced or compulsory labour or service, often without remuneration and often, though not necessarily, involving physical hardship, sex, prostitution, and human trafficking.³⁸⁵ The judgment of the Appeals Chamber emphasizes the evolutive interpretation of the concept of slavery, considering that in the case of contemporary forms of slavery, the victim is not subject to the exercise of the more extreme rights of ownership, 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 juridical personality.”³⁸⁶ The *Ad hoc* International Criminal Tribunal for the former Yugoslavia considered that, at the time of the facts of the case (1992), the contemporary forms of slavery identified in the original judgment formed part of enslavement as a crime against humanity under customary international law.³⁸⁷

260. Subsequently, in the *Krnjelac* case, the *Ad hoc* International Criminal Tribunal for the former Yugoslavia confirmed the standards established in the *Kunarac* case and indicated that, in that case, the enslavement that occurred was “primarily related to forced labour.”³⁸⁸

³⁸³ International Law Commission, Text of the draft articles on crimes against humanity, art. 3.2.c. Available at: <http://legal.un.org/ilc/reports/2017/english/chp4.pdf>.

³⁸⁴ ICTY, *Case of Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic* (hereinafter *Case of Prosecutor v. Kunarac*), No. IT-96-23. Trial Chamber, Judgment of February 22, 2001; and No. IT-96-23-A, Appeals Chamber, Judgment of June 12, 2002.

³⁸⁵ ICTY, *Case of Prosecutor v. Kunarac*, Judgment of February 22, 2001, para. 542.

³⁸⁶ ICTY, *Case of Prosecutor v. Kunarac*, Judgment of June 12, 2012, para. 117.

³⁸⁷ ICTY, *Case of Prosecutor v. Kunarac*, Judgment of June 12, 2012, para. 117.

³⁸⁸ ICTY, *Case of Prosecutor v. Milorad Krnjelac* (hereinafter *Case of Prosecutor v. Krnjelac*), No. IT-97-25-T, Trial Chamber, Judgment of March 15, 2002, para. 357.

261. The Special Court for Sierra Leone (hereinafter also "SCSL"), in the judgments in the 2007 cases of *Sesay, Kallon and Gbao*³⁸⁹ and *Brima, Kamara and Kanu*, reaffirmed the standards established by the *Ad hoc* International Criminal Tribunal for the former Yugoslavia in the *Kunarac* and *Krnjelac* cases.³⁹⁰ The Special Court for Sierra Leone also considered forced labor as a form of slavery in the case of *Charles Taylor*, among others. In this regard, it stated that "[i]n order to establish forced labour as enslavement, the relevant consideration is whether 'the relevant persons had no choice as to whether they would work,' which is a factual determination," rather than one 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 of slavery under international law and in the above-mentioned case, asserting that the crime of slavery was characterized by the concept of the "powers relating to ownership," and considering, as a fundamental element, the degree of power or control exercised over the person. The ECOWAS Court of Justice agreed with the *Ad hoc* International Criminal Tribunal for the former Yugoslavia (*Fiscal v. Kunarac*) that "enslavement depended on the operation of factors or *indicia* of enslavement including the control of a someone's movement, control of physical environment, psychological control, measures to prevent or deter escape, force, threat of force or coercion, duration, [...] subjection to cruel treatment and abuse, control of sexuality, and forced labor."³⁹³

263. In 2005, the European Court of Human Rights had the occasion to examine the phenomenon of slavery and servitude for the first time in the case of *Siliadin v. France*.³⁹⁴ Although the ECHR did not classify the specific situation in litigation as slavery (understood at that time in the sense of the classic definition of the 1926 Convention), it considered that the situation of Ms. Siliadin constituted servitude. In this regard, it mentioned, *inter alia*, the 1956 Supplementary Convention. Thus, it concluded that servitude meant "an obligation to provide one's services that is imposed by the use of coercion, and is to be linked with the concept of 'slavery.'" In addition, the "serf" has the obligation to live on another person's property and [finds himself in] the impossibility of altering his condition."³⁹⁵ Other relevant facts to determine the condition of servitude were the fact that the victim was "a minor and she had no resources and was vulnerable and isolated, and had no means of living elsewhere" and was entirely at the mercy of her tormentors, without freedom of movement or free time.³⁹⁶

264. In addition, in a more recent judgment, in 2010, the European Court diverged from the "classic" definition of servitude mentioned in the *Siliadin* case, to recognize, as had the *Ad hoc* International Criminal Tribunal for the former Yugoslavia in the *Kunarac* case, that "the traditional concept of "slavery" has evolved to encompass various contemporary forms

³⁸⁹ SCSL, *Case of Prosecutor v. Sesay, Kallon and Gbao*, Trial judgment, Case No. TESS-04-15-T, Trial Chamber I, Mach 2, 2009, para. 199.

³⁹⁰ SCSL, *Case of Prosecutor v. Brima, Kamara and Kanu*, No. TESS-04-16-T-628, Trial Court. Judgment of June 20, 2007, paras. 744 to 748.

³⁹¹ SCSL, *Case of Prosecutor v. Charles Taylor*, No. TESS-03-01-T, Trial Court, Judgment of May 18, 2012, para. 448.

³⁹² ECOWAS Court of Justice, *Case of Mme Hadijatou Mani Koraou v. Republic of Niger*, No. ECW/CCJ/JUD/06/08, Judgment of October 27, 2008.

³⁹³ ECOWAS Court of Justice, *Case of Mme Hadijatou Mani Koraou v. Republic of Niger*, Judgment of October 27, 2008, paras. 76 to 79.

³⁹⁴ ECHR, *Case of Siliadin v. France*, No. 73316/01, Judgment of July 26, 2005, paras. 82 to 149.

³⁹⁵ ECHR, *Case of Siliadin v. France*, paras. 123 and 124.

³⁹⁶ ECHR, *Case of Siliadin v. France*, paras. 126 and 127.

of slavery based on the exercise of any or all of the powers attaching to the right of ownership,” reiterating the relevant factors listed by the Ad hoc International Criminal Tribunal for the former Yugoslavia to determine whether the situation in question represented a contemporary form of slavery.³⁹⁷

265. Recently, the Extraordinary Chambers in the Courts of Cambodia, in the judgment on appeal in the *Duch case*,³⁹⁸ used the evolution of the concept of slavery to establish its definition in the sense used by the Ad hoc International Criminal Tribunal for the former Yugoslavia in *Kunarac*, and the international courts mentioned above.

266. The African Commission on Human and Peoples’ Rights, in the case of the *Malawi African Association and Others v. Mauritania*³⁹⁹ on “practices analogous to slavery” and racial discrimination against Black ethnic groups, considered that Article 5 of the African Charter on Human and Peoples’ Rights had been violated,⁴⁰⁰ owing to the State’s failure to prevent practices similar to slavery in its territory.

267. In addition to these international tribunals, other international bodies have expressed similar opinions, giving content to the current phenomenon of slavery to include contemporary or analogous forms. In this regard, the Court underlines the rulings of the United Nations Committee on the Elimination of Discrimination against Women (CEDAW),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 Rights⁴⁰⁵ and the Inter-American Commission on Human Rights.⁴⁰⁶

268. Based on the summary of binding international instruments and the rulings of the international tribunals listed above, the Court notes that the absolute and universal prohibition of slavery is established in international law, and the definition of this concept

³⁹⁷ ECHR, *Case of 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 Democratic Kampuchea, *Case of Duch*, No. 001/18-07-2007/ECCC/SC, Supreme Court Chamber, Judgment of February 3, 2012, paras. 117 to 167.

³⁹⁹ African Commission on Human and Peoples’ Rights, *Case of Malawi African Association and Others v. Mauritania*, Communications Nos. 54/91, 61/91, 98/93, 164/97-196/97 and 210/98 (2000), Ruling of May 11, 2000, paras. 132 to 135.

⁴⁰⁰ Article 5: “[a]ll forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited”.

⁴⁰¹ CEDAW, UN Doc. A/55/38, Part one, May 1, 2000, para. 113: “The Committee considers forced labour of women to be a contemporary form of slavery and a denial of their rights.” CEDAW, UN Doc. A/57/38, Part two, September 15, 2002, para. 383: “The Committee wishes to draw attention to the wide and increasing dimensions of trafficking in women, which constitutes a major part of contemporary trade in persons and 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, of April 30, 2001: “The State party should take appropriate steps to combat this practice [trafficking of women into and through its territory, particularly for purposes of sexual exploitation], which constitutes a violation of several Covenant rights, including the right under article 8 to be free from slavery and servitude.”

⁴⁰³ United Nations Working Group on Contemporary Forms of Slavery. Report E/CN.4/Sub.2/1993/30, June 23, 1993, para. 99; Report E/CN.4/Sub.2/1998/14, July 6, 1998, para. 97.6.

⁴⁰⁴ United Nations Special Rapporteur on trafficking in persons, especially women and children, Report 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 at: <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*, OEA/Ser.L/V/II.Doc. 58, 2009.

has not varied substantially 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 aspects of the traditional definition of slavery or "chattel slavery"⁴⁰⁷ (status or condition of a person; exercise of any or all of the powers attaching to the right of ownership), the Court has verified that: (i) since the 1926 Convention the slave trade has been equated to slavery for the purposes of its prohibition and elimination; (ii) the 1956 Supplementary Convention extended protection against slavery also to "institutions and practices similar to slavery" such as debt bondage and serfdom, among others,⁴⁰⁸ in addition to stipulating the prohibition of trafficking and the respective State obligations, and (iii) the Rome Statute and the International Law Commission added the "exercise of any or all of the powers attaching to the right of ownership" such as by trafficking in persons to the definition of enslavement.

B.3. Aspects of the concept of slavery

269. Based on the evolution of the concept of slavery in international law and on the prohibition established in Article 6 of the American Convention on Human Rights, the Court observes that the concept has evolved and is no longer limited to the ownership of a person. In this regard, the Court considers that the two fundamental aspects to define a situation as slavery are: (i) the status or condition of a person, and (ii) the exercise of any or all of the powers attaching to the right of ownership; in other words, the enslaver exercises power or control over the enslaved person to the point of obliterating the personality of the victim. The characteristics of each of these aspects are understood in keeping with the criteria or factors identified below.

270. The first aspect (status or condition) refers to both the *de jure* and the *de facto* situation; in other words, the existence of a formal document or law is not essential to characterize the phenomenon, as in the case of traditional or chattel slavery.

271. Regarding the aspect of "ownership," this should be understood within the phenomenon of slavery as "possession"; that is, demonstration of control of one person over another. Consequently, "when determining the level of control required to consider an act as slavery, [...] this could be equated to the loss of a person's own will, or to a considerable decrease in personal autonomy,"⁴⁰⁹ In this regard, the so-called "exercise of the powers attaching to the right of ownership" should now be understood as constituting control over a person in such a way as to significantly deprive that person of his or her individual liberty,⁴¹⁰ "with the intent of exploitation through the use, management, profit, transfer or disposal of that person. Usually, this exercise will be supported by and obtained through means such as violent force, deception and/or coercion."⁴¹¹

272. The Court shares this opinion and considers that it accords with the rulings of the *Ad hoc* International Criminal Tribunal for the former Yugoslavia, the Special Court for Sierra Leone, and Court of Justice of the Economic Community of West African States (*supra* paras. 259 to 262), so that, in order to determine whether a situation of slavery exists

⁴⁰⁷ "Chattel slavery" refers to traditional slavery or legal slavery, in which one person legally belonged to another. See, written expert opinion of Jean Allain (evidence file, folios 14915 and 14920).

⁴⁰⁸ 1956 Supplementary Convention, Article 1.

⁴⁰⁹ Written expert opinion of Jean Allain, folio 14929.

⁴¹⁰ Written expert opinion of Jean Allain, folio 14930; International Criminal Court, Assembly of States Parties to the Rome Statute of the International Criminal Court, Elements of Crimes, Document ICC-ASP/1/3, September 9, 2002, p. 117.

⁴¹¹ Written expert opinion of Jean Allain, folio 14931; and 2012 Bellagio-Harvard Guidelines on the Legal Parameters of Slavery, Guideline No. 2.

nowadays, it is necessary to assess the manifestation of the so-called "powers attaching to the right of ownership" based on the following elements:

- a) the restriction or control of an individual's autonomy;
- b) the loss or restriction of freedom of movement;
- c) the accruing of some gain to the perpetrator;
- d) the absence of the victim's consent or free will, or it is rendered impossible or irrelevant by the threat or use of force or other forms of coercion, the fear of violence, deception or false promises;
- e) the use of physical force or psychological oppression;
- f) the victim's position of vulnerability;
- g) detention or captivity;
- i) exploitation.⁴¹²

273. It is evident from the above that when a situation of slavery is verified, there has been a substantial restriction of the juridical personality of the individual concerned⁴¹³ and it could also include violations of the rights to personal integrity, personal liberty and dignity, among others, depending on the specific circumstances of each case.

B.4. Prohibition of servitude and its definition as a practice similar to slavery

274. Before analyzing the specific facts of this case, the Court deems it pertinent to include some considerations on the interpretation of servitude, the slave trade, traffic in women and forced labor in light of Article 6 of the American Convention. Accordingly, the Court will refer to the evolution of these concepts in international law.

275. Regarding servitude, its absolute prohibition dates from the 1956 Supplementary Convention and its codification in subsequent instruments of international law (*supra* paras. 249 to 257). In this regard, Article 1 of the 1956 Supplementary Convention indicates that debt bondage and serfdom are practices similar to slavery that must be abolished or abandoned. All the regional instruments include the prohibition of servitude, and this was considered a practice analogous to slavery by, *inter alia*, the European Court of Human Rights,⁴¹⁴ the *Ad hoc* International Criminal Tribunal for the former Yugoslavia, the Special Court for Sierra Leone and other specialized bodies (*supra* paras. 259 to 268).

276. On this basis, the Court notes that the absolute prohibition of traditional slavery and its interpretation have evolved so that it also includes certain analogous forms of this phenomenon, which are revealed in different ways at the present time, but retain certain essential characteristics that are common to traditional slavery, such as the exercise of control over an individual by physical or psychological coercion in such a way that it entails the loss of the individual's autonomy and his unwilling exploitation.⁴¹⁵ Accordingly, the

⁴¹² ICTY, *Case of Prosecutor v. Kunarac*, Trial Chamber, para. 542.

⁴¹³ ICTY, *Case of Prosecutor v. Kunarac*, Appeals Chamber, para. 117; and ECHR, *Case of Rantsev v. Cyprus and Russia*, paras. 280 and 281.

⁴¹⁴ ECHR, *Case of Siliadin v. France*, para. 124.

⁴¹⁵ The Appeals Chamber of the *Ad hoc* International Criminal Tribunal for the former Yugoslavia also understood this when it asserted 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

Inter-American Court considers that servitude is a practice analogous to slavery and should receive the same protection and involve the same obligations as traditional slavery.

277. Consequently, the Court will define the scope of the prohibition established in Article 6(1) of the Convention. To this end, it finds it useful and appropriate to examine the evolution that has occurred on this issue in international human rights law.

278. As indicated previously, the 1956 Supplementary Convention defined practices similar to slavery as serfdom,⁴¹⁶ and debt bondage,⁴¹⁷ *inter alia*.⁴¹⁸

279. The European Court of Human Rights, in the case of *Siliadin v. France* mentioned above, determined that servitude consisted in “the obligation to perform certain services for others [...] that is imposed by the use of coercion,” and “the obligation for the ‘serf’ to live on another person’s property and the impossibility of altering his condition.”⁴¹⁹ Subsequently, the European Court observed that servitude corresponded to “‘aggravated’ forced or compulsory labour,” because the victim feels “that their condition is permanent and that the situation is unlikely to change.”⁴²⁰ In addition, coercion may be both overt and subtle.⁴²¹

280. Consequently, the Court agrees with the European Court’s definition of “servitude” and considers that this term in Article 6(1) of the Convention should be interpreted as “the obligation to perform certain services for others [...] that is imposed by the use of coercion,” and “the obligation for the ‘serf’ to live on another person’s property and the impossibility of altering his condition.”

B.5. Definition of the slave trade and traffic in women and their prohibition

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

⁴¹⁶ “Serfdom, that is to say, 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 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;
- (iv) 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, *Case of Siliadin v. France*, para. 123.

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

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

281. The American Convention prohibits both the slave trade and traffic in women "in all their forms"; therefore, the Court interprets this prohibition broadly and subject to clarification of its definition in keeping with its evolution in international law. The Court will now examine the evolution of the prohibition of the slave trade and traffic of women in international law in order to define the legal content of the prohibition established in the American Convention.

282. Regarding the prohibition of the slave trade, this has been associated with slavery⁴²² since the 1926 Convention and entails the obligation for States to abolish this practice.⁴²³ Its prohibition is also absolute and is explicit in all the instruments reviewed in the previous sections.

283. The prohibition of the traffic in women (and children) is the subject of several international treaties adopted during the twentieth century,⁴²⁴ and it was consolidated in the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.⁴²⁵ Article 1 of this Convention refers to the element of "consent" and to the exploitation (the prostitution) of another person, as key elements of the prohibition of prostitution and the traffic in persons for this purpose.

284. Meanwhile, the principal specialized international treaty on trafficking, 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 Protocol of Palermo"), of 2000, clearly establishes the prohibition of trafficking in persons in its article 4.⁴²⁶ Also, article 3 of this Protocol defines human trafficking or trafficking in persons as follows:

(a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring 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 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;

(c) The recruitment, transportation, transfer, harbouring 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; [...].

⁴²² See Written expert opinion of Jean Allain, folio 14917.

⁴²³ According to expert witness Jean Allain, "The prohibition of slavery overlaps with the prohibition of the slave trade." Written expert opinion of Jean Allain, folio 14917.

⁴²⁴ International Agreement for the suppression of the "White Slave Traffic" of May 18, 1904, amended by the Protocol adopted by the United Nations General Assembly on December 3, 1948; International Convention of May 4, 1910, for the Suppression of the White Slave Traffic, amended by the Protocol adopted by the United Nations General Assembly on December 3, 1948; International Convention for the Suppression of the Traffic of Women and Children of September 30, 1921, amended by the Protocol adopted by the United Nations General Assembly on October 20, 1947; International Convention for the Suppression of the Traffic in Women of Full Age of October 11, 1933, amended by the Protocol adopted by the United Nations General Assembly on October 20, 1947.

⁴²⁵ See Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. Available at: <https://www.ohchr.org/EN/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 at: <https://www.osce.org/odihr/19223?download=true>.

285. Likewise, the 2005 Convention of the Council of Europe on Action against Trafficking in Human Beings establishes the prohibition of trafficking in human beings and determines the State obligations in similar terms to the Protocol of Palermo.⁴²⁷

286. In addition, several of the United Nations specialized agencies working in this area have referred to trafficking in persons as a form of slavery. Thus, the Working Group on Contemporary forms of Slavery has declared that the trans-border trafficking of women and girls for sexual exploitation was a contemporary form of slavery and that the international treaties against slavery included trafficking.⁴²⁸ The Special Rapporteur on Violence against Women has adopted a similar position.⁴²⁹ While, in 2009, the Special Rapporteur on Contemporary forms of Slavery, its causes and consequences, has stated that “[t]he advance payment, both in the cases of trafficking in humans and bonded labour, becomes the tool of enslavement and puts the trafficker and creditor in a dominant position.”⁴³⁰ The Special Rapporteur on trafficking in persons, especially women and children, also considered trafficking in persons to be “a modern day slave trade” on a massive scale.⁴³¹ The Special Rapporteur also stated that “trafficking is a grave violation of human rights, especially the right not be held in slavery or involuntary servitude.”⁴³²

287. Under the European human rights system, even though there is no explicit mention of the phenomenon in the European Convention on Human Rights,⁴³³ the European Court has concluded that the definition of trafficking in persons in the Protocol of Palermo included the prohibition of slavery, servitude and forced labor and fell within the scope of Article 4 of the European Convention.⁴³⁴ In the case of *Rantsev v. Cyprus and Russia*, the European Court established that trafficking in persons “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 labour, often for little or no payment, usually in the sex industry but also elsewhere. It implies close surveillance of the activities of victims, whose movements are often circumscribed. It

⁴²⁷ Convention of the Council of Europe 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, harbouring 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, harbouring 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 of the United Nations Working Group on Contemporary Forms of Slavery. Sub-Commission on Prevention of Discrimination and Protection of Minorities. 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, February 12, 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 of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences. UN Doc. A/HRC/12/21, July 10, 2009, para. 66.

⁴³¹ Report of the Special Rapporteur on trafficking in persons, especially women and children. UN doc. A/HRC/10/16, February 20, 2009, para. 6: “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 of the Special Rapporteur on trafficking in persons, especially women and children, para.19.

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

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

involves the use of violence and threats against victims, who live and work under poor conditions."⁴³⁵

288. The definitions included in the previously mentioned international treaties and the interpretation by the European Court of Human Rights in the *Rantsev* case leave no doubt that the concepts of the slave trade and traffic in women have transcended their literal meaning in order, at the current stage of evolution of international human rights law, to protect the "persons" trafficked for the purpose of subjecting them to different forms of unwilling exploitation. One and the same factor connects the prohibitions of the slave trade and traffic in women, and that is the control exercised by the perpetrators over the victims during their transportation and transfer for exploitation purposes. The European Court also identified the following factors that were 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 or compulsory labor.⁴³⁶

289. Based on the foregoing, the Inter-American Court considers that, in light of the evolution of international law in recent decades, the phrase "slave trade and traffic in women" of Article 6(1) of the American Convention should be interpreted broadly to refer to "trafficking in persons." In the same way that the purpose of the slave trade and traffic in women is the exploitation of the human person, based on the interpretation that is most favorable to the individual and the *pro persona* principle, the Court cannot limit the protection granted by this article only to women or to the said "slaves."⁴³⁷ This is important to give practical effects to the prohibition established in the American Convention pursuant to the evolution of the phenomenon of human trafficking in our 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) The 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 position of vulnerability or of the giving or receiving of payments or benefits to achieve consent by a person having control over another person. In the case of children under 18 years of age these requirements are not a necessary condition to characterize trafficking;
- iii) For the purpose of any kind 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 meaning and scope of this provision in the case of *the Ituango Massacres v. Colombia*.⁴³⁹ In that judgment, the Court accepted the

⁴³⁵ ECHR, *Case of Rantsev v. Cyprus and Russia*, para. 281.

⁴³⁶ ECHR, *Case of Rantsev v. Cyprus and Russia*, para. 280.

⁴³⁷ Cf. *Case of Boyce et al. v. Barbados, Preliminary objection, merits, reparations and costs*. Judgment of November 20, 2007. Series C No. 169, para. 52, and *Case of Wong Ho Wing v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of June 30, 2015. Series C No. 297, para. 126.

⁴³⁸ "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 and the removal of organs." Protocol of Palermo, Article 3. Written expert opinion of Jean Allain, evidence file, folios 14986 and 14987.

⁴³⁹ Cf. *Case of the Ituango Massacres*, paras. 155 to 160.

definition of forced labor contained in Article 2(1) of ILO Convention No. 29, which stipulates that:

[T]he term 'forced or compulsory labour' 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 the said judgment, the Court considered that the definition of forced or compulsory labor included two basic elements: that the work or service was exacted "by threat of a penalty," and that it was performed unwillingly.⁴⁴⁰ Also, in the circumstances of that case, the Court considered that, in order to constitute a violation of Article 6(2) of the Convention it would be necessary that the presumed violation could be attributed to State agents, either by their direct participation in the facts or by their acquiescence to them.⁴⁴¹ The Court will now analyze the facts of this case in light of these three criteria.

293. Regarding "threat of a penalty," this may consist, *inter alia*, in the real and actual presence of intimidation that can assume multiple forms and degrees, the most extreme of which are those that entail coercion, physical violence, isolation, or restriction of movement, as well as death threats addressed at the victims or their family members.⁴⁴² And, with regard to the "unwillingness to perform the work or service," this consists in the absence of consent or of free choice at the time of beginning or continuing the situation of forced labor. This can occur for different reasons, such as the unlawful deprivation of liberty, deception or psychological coercion.⁴⁴³ In the case of attribution to State agents, the Court considers that this element is restricted to the obligation to respect the prohibition of forced labor, which was relevant in the case of the *Ituango Massacres* due to the specific circumstances of the case. However, that element cannot be retained when the alleged violation refers to the obligation to guarantee and to prevent harm to a human right established in the American Convention; thus, it is not necessary that the violation could be attributed to State agents in order to constitute forced labor. In this regard, in the next section, the Court will establish the State's obligations in relation to the prohibition of slavery, servitude, trafficking in persons and forced labor.

B.7. The facts of this case in light of the international standards

294. The Court will now examine the facts of this case to determine whether they correspond to any of the situations defined in the preceding sections. After determining the type of situation to which the presumed victims were subjected in Hacienda Brasil Verde, the Court will describe the obligations of the State that may have been violated in this case.

295. Initially, it should be pointed out that there is no dispute between the parties about the historical evolution of the phenomenon of slavery in Brazil; particularly, in rural areas. Furthermore, there is no dispute concerning the reports presented by the *Comissão Pastoral da Terra* and other organisations, starting in the 1970s, about the occurrence of "slave labor" in the north and northeast of the country, or about Hacienda Brasil Verde specifically, from 1988 to 2000 (*supra* paras. 110 to 115). Lastly, the Court considers that there is no dispute regarding the fact that State agents did not participate actively and directly in the subjection of the workers to the alleged situation of "slave labor" in Hacienda Brasil Verde, but rather this involved private third parties.

⁴⁴⁰ Cf. *Case of the Ituango Massacres*, para. 160.

⁴⁴¹ Cf. *Case of the Ituango Massacres*, para. 160.

⁴⁴² Cf. *Case of the Ituango Massacres*, para. 161.

⁴⁴³ Cf. *Case of the Ituango Massacres*, para. 164.

296. Regarding the specific facts of the case that were alleged to violate Article 6(1) of the American Convention, following a careful examination of the case file and the evidence submitted by the parties to this litigation, the Court has established the relevant facts, and these are described below.

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

298. To reach Hacienda Brasil Verde, the recruited workers traveled for around three days by bus, train and truck (*supra* para. 165). The workers also had to spend one night in a hotel located in Xinguara, and incurred debts in this regard (*supra* para. 165).

299. When the workers arrived at Hacienda Brasil Verde they handed over their work permits to the manager, who obliged them to sign blank documents. The State was aware of this practice from previous inspections (*supra* para. 166).⁴⁴⁴ In the case of presumed victim Antônio Francisco da Silva, the managers changed the date of birth recorded on his work permit so that it would appear that he was an adult and, thus, could work in the hacienda.

300. The statements obtained from the workers reveal that, on arriving at the hacienda, they realized that nothing that the *gato* had offered was true (*supra* para. 166). Their living and working conditions were unhygienic and degrading. The food was insufficient and of poor quality. The water they used came from a small waterfall amid the vegetation, and it was stored in inadequate recipients and shared out in communal bottles (*supra* para. 167). The working day was exhausting, lasting 12 hours or more every day except Sunday (*supra* para. 168).

301. All the food they ate was noted down in a notebook and the cost was then deducted from their salaries, which increased their debt to their employer (*supra* para. 167). In addition, the workers were obliged to work under the orders and threats of the hacienda foremen, who were armed and guarded them permanently (*supra* para. 171). Consequently, the workers were prevented from leaving the hacienda if they needed to buy something and were obliged to ask the hacienda foremen to make the corresponding purchases, with the respective deduction from their salary (*supra* para. 172).

302. Owing to the situation in which the workers found themselves, they longed to escape from the hacienda. However, the surveillance to which they were subject, added to the lack of a salary, and the isolated location of the hacienda with the presence of wild animals in the surrounding areas, prevented them from returning home (*supra* para. 173). The Public Prosecution Service characterized this as a "private prison system" (*supra* para. 179).

303. The description of the facts in the preceding paragraphs underscores the existence of a mechanism to recruit workers using fraud and deception. The Court also considers that the facts of the case indicate the existence of a situation of debt bondage because, from the moment the workers received the money advanced by the *gato*, until they received their paltry salaries with the deductions for food, medicines and other products, they were contracting a debt that they could never repay. As an aggravating factor to this system known in some countries as the "truck system," "peonage or debt slavery" or "system of *barracão*," the workers were subjected to excessive working hours by threats and violence, while living in degrading conditions. In addition, the workers had no possibility of being

⁴⁴⁴ *Inter alia*, Communication PRT 8^a 2357/2001, of June 21, 2001, (evidence file, folios 1031 to 1036).

able to escape from this situation owing to: (i) the presence of armed guards; (ii) the restrictions to leaving the hacienda without paying off their debts; (iii) the physical and psychological coercion by *gatos* and security guards, and (iv) the fear of reprisals and of dying in the forest if they tried to flee. These conditions were magnified by the situation of vulnerability of the workers, who were mostly illiterate and from a distant region of the country, who had no knowledge of the area surrounding Hacienda Brasil Verde and who were subjected to inhumane living conditions.

304. In view of the foregoing, the Court finds it evident that the workers rescued from Hacienda Brasil Verde were in a situation of debt bondage and subject to forced labor. Nevertheless, the Court considers that the specific characteristics of the situation to which the 85 workers rescued on March 15, 2000, were subjected exceeds the limits of debt bondage and forced labor, and meets the strictest criteria 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. In this regard, the Court notes that: (i) the workers were subject to the control of the *gatos*, foremen, and armed guards of the hacienda and ultimately, of its owner; (ii) in a way that restricted their personal liberty and autonomy; (iii) without their free consent; (iv) by means of threats, and physical and psychological violence, (v) in order to exploit their forced labor in inhumane conditions. Furthermore, the circumstances of the escape undertaken by Antônio Francisco da Silva and Gonçalo Luiz Furtado and the risks they faced until they were able to report what had happened to the Federal Police reveal: (vi) the vulnerability of the workers, and (vii) the environment of coercion that existed in the hacienda, which (viii) did not allow the workers to change their situation and recover their liberty. Based on all the foregoing, the Court concludes that the situation verified in Hacienda Brasil Verde in March 2000 constituted a situation of slavery.

305. Furthermore, taking into consideration the context of this case as regards the capture and recruitment of workers from the poorest regions of the country in particular, using fraud, deception and false promises, to bring them to haciendas in the states of Maranhão, Mato Grosso, Pará and Tocantins (*supra* para. 112), as well as the expert opinion of Federal Prosecutor Raquel Elias Dodge during the public hearing in this case, in which she provided details of the contemporary trafficking in persons in Brazil in order to exploit their labor, the "interview notes" of the workers rescued as a result of the March 2000 inspection, the reports of Antônio Francisco da Silva and Gonçalo Luiz Furtado that originated the said inspection, and the testimony of Marcos Antônio Lima, Francisco Fabiano Leandro, Rogerio Felix Silva, and Francisco das Chagas Bastos Sousa, during the on-site procedure in this case, the Court finds it proved that the workers rescued in March 2000 had been victims of trafficking.

306. In the instant case, the representatives argued that, in addition, the context and the situation in Hacienda Brasil Verde in March 2000 constituted violations of the rights to juridical personality, personal integrity, personal liberty, honor and dignity, and to freedom of movement and residence. In this regard, the Court notes that these arguments refer to the facts that have already been analyzed under Article 6 of the Convention. Accordingly, the Court considers that, due to the nature of slavery as a crime that violates multiple norms, when a person is subjected to this condition, various individual rights are violated to a greater or lesser extent depending on the specific factual circumstances of each case. Nevertheless, owing to the specific and complex definition of the concept of slavery, when verifying a situation of slavery, such rights are subsumed in the Convention under Article 6. Thus, the Court considers that the analysis of the violation of Article 6 of the Convention has already taken into account the elements alleged by the representatives as violations of other rights because, when examining the facts of the case, the Court verified that the violation of personal integrity and liberty (use of force and threats of violence, physical and psychological coercion of the workers, restriction of freedom of movement), the demeaning

treatment (degrading housing, food, and work conditions), and the limitation of freedom of movement (restrictions of movement based on the debts, and forced labor), were elements that constituted slavery in this case. Consequently, the Court finds it unnecessary to make an individual ruling on the other rights alleged by the representatives.⁴⁴⁵ Nevertheless, these rights will be taken into account when determining the State's responsibility in this case and, as appropriate, when ordering reparations.

B.8. Brazil's criminal laws

307. The Court finds it opportune to include some considerations on the State of Brazil's argument that the situation identified in Hacienda Brasil Verde would only represent violations of labor laws under the laws of Brazil, and that it could possibly have been characterized as an offense under article 149 of the Penal Code, but, in no circumstances, could it be characterized as slavery, servitude or forced labor under the relevant provisions of international human rights law.

308. The Court has examined the facts of this case in light of the evolution of the relevant international human rights law and has concluded that the situation of the workers rescued in March 2000 constituted a condition similar to slavery, prohibited by Article 6(1) of the American Convention (*supra* para. 241). The State's argument suggests that the definition of the offense of reducing someone to the condition of a slave in article 149 of the Brazilian Penal Code was too broad, and supposedly incorporated elements that were not contemplated in international law. In this regard, the Court finds it pertinent to emphasize two crucial points.

309. First, it should be clarified that, at the time of the facts of this case, the definition of the offense was merely: "Art. 149 - To reduce someone to a condition similar to that of a slave: Penalty - from 2 (two) to 8 (eight) years' imprisonment." In other words, this was not the new definition of the offense established by the 2003 amendment, which included four conducts that constituted conditions similar to slavery (forced labor, arduous working days, degrading working conditions, and restriction of movement based on a debt contracted with the employer).⁴⁴⁶ Thus, it should be recalled that the definition of the offense in force at the time of the facts could not be characterized as different from the prohibition that exists in the American Convention, or "too broad" as the State has suggested.

⁴⁴⁵ Cf. *Case of Fernández Ortega et al. v. Mexico. Preliminary objections, merits, reparations and costs*. Judgment of August 30, 2010. Series C No. 215, paras. 132, 150 and 202, and *Case of Canales Huapaya et al. v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of June 24, 2015. Series C No. 296, para. 114.

⁴⁴⁶ Reduction to a condition similar to that of a slave:

Art. 149. To reduce someone to a condition analogous to that of a slave, or to subject that person to forced labor or to arduous working days, or to subject them to degrading working conditions, or to restrict, in any manner whatsoever, their mobility by reason of a debt contracted in respect of the employer or a representative of that employer.

Penalty - two to eight years' imprisonment and a fine, in addition to the penalty corresponding to violence.

1. The same penalty is applicable to those who:

I. prevent employees from using any means of transportation in order to retain them at the place of work.

II. maintain constant surveillance in the place of work, or appropriate workers' personal papers or property in order to retain them at the place of work.

2. The penalty shall be increased by half if the offense is committed:

I. against a child or adolescent;

II. based on race, color, ethnicity, religion or origin.

310. In addition, the jurisprudence of Brazil's high courts provided to the Court during the litigation of this case by both the State and the representatives, witnesses, deponents for information purpose, and expert witnesses reveals that the fundamental factor for the Brazilian courts to determine the existence of a situation analogous to that of a slave before the definition of the offense was amended in 2003 was the deprivation of the worker's liberty. The interpretation of the prohibition of slavery in the original article 149 of the Penal Code indicated that there must be a restriction of the victims' liberty, a fact confirmed in this case based on the threats, violence and debt bondage that existed in Hacienda Brasil Verde (*supra* para. 304). In addition, the existence of extenuating work, degrading living conditions, falsification of documents and the presence of minors were verified. This totally contradicts the State's argument that the workers were free to leave the hacienda. Consequently, the State's argument that the facts could characterize slavery only under domestic laws – and not based on international law – is groundless.

311. Second, it is important to point out that, if a country enacts laws that are more protective of the individual, as could be understood by the prohibition of slavery under Brazil's legal system in 2003, the Court cannot restrict its analysis of the specific situation based on a law that grants less protection. This is the meaning of Article 29 of the American Convention, which stipulates:

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 the laws of any State Party or 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. A literal reading of paragraph (b) of Article 29 clearly reveals that the Convention does not permit an interpretation that limits the enjoyment and exercise of human rights.⁴⁴⁷ The *pro persona* interpretation requires the Court to interpret the human rights recognized in the American Convention in light of the most protective norm to which the persons under its jurisdiction are subject.

313. Lastly, the Court points out that the recent jurisprudence of Brazil's Supreme Federal Court accords with the ruling of the Inter-American Court in this case. The decisions handed down during this litigation reveal that the Supreme Labor Court and the Supreme Federal Court interpret situations analogous to slavery responsibly, making it clear that a mere violation of the labor laws does not reach the threshold of reduction to slavery; rather the violations must be serious, persistent and affect the victim's free will. The opinion of Justice Rosa Weber in Special Remedy 459510/MT reflects this perspective:

"Obviously, not every violation of labor rights constitutes slave labor. However, if the violation of the rights guaranteed by the labor laws in force is intense and persistent, if it reaches unacceptable levels and if workers are subjected to forced labor, extenuating working days or degrading conditions, it is possible, under these circumstances, to characterize the situation under the offense defined in art. 149 of the Penal Code, because the workers have been subjected to treatment analogous to that of a slave, with the deprivation of their liberty and,

⁴⁴⁷ Cf. *Case of Apitz Barbera et al. ("First Administrative Contentious Court") v. Venezuela. Preliminary objection, merits, reparations and costs.* Judgment of August 5, 2008. Series C No. 182, para. 218, and *Case of Ruano Torres et al. v. El Salvador. Merits, reparations and costs.* Judgment of October 5, 2015. Series C No. 303, para. 29.

above all, their dignity, even in the absence of direct restriction of the freedom to come and go."⁴⁴⁸

314. Based on the above, the Court does not find that the State's argument regarding a broader protection provided by article 149 of the Brazilian Penal Code can exempt it from responsibility in this case.

B.9. State responsibility in this case

315. Having characterized the situation of the workers present in Hacienda Brasil Verde as a manifestation of slavery, the Court will now examine whether the State was responsible for these facts based on the American Convention.

316. As on other occasions, the Court reiterates that it is not sufficient that States refrain from violating rights; it is also essential that they adopt positive measures determined on the basis of the specific needs for protection of the subject of law, due to his personal situation or to the specific situation in which he finds himself.⁴⁴⁹

317. In addition, the prohibition of subjection to slavery plays an essential role in the American Convention, because slavery represents one of the most fundamental violations of an individual's dignity and, at the same time, of various rights recognized in the Convention (*supra* para. 306). States have the obligation to ensure the creation of the conditions required to guarantee that violations of this inalienable right do not occur and, in particular, the duty to prevent its agents as well as private individuals from violating it. Compliance with Article 6, in relation to Article 1(1) of the American Convention, not only supposes that no one may be subjected to slavery, servitude, trafficking or forced labor, but also requires States to adopt all appropriate measures to end such practices and prevent violations of the right not to be subjected to such conditions pursuant to the obligation to ensure the free and full exercise of their rights to every person subject to their jurisdiction.⁴⁵⁰

318. Moreover, owing to the elevated number of victims of slavery, trafficking and servitude that the Brazilian authorities continue to free, and the change in the perception of these phenomena and their occurrence "in the last links of the supply chains of a globalized economy,"⁴⁵¹ it is important that the State take steps to discourage the demand that feeds worker exploitation, by both forced labor, and servitude and slavery.⁴⁵²

319. Regarding the obligation to ensure the right recognized in Article 6 of the American Convention, the Court considers that this entails the State's duty to prevent and to investigate possible situations of slavery, servitude, trafficking and forced labor. Among

⁴⁴⁸ Original: "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 and persistente, se atinge níveis gritantes and 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 Penal Code, pois conferido aos trabalhadores tratamento análogo ao de escravos, com a privação de sua liberdade and sobretudo de sua dignidade, mesmo na ausência de coação direta contra a liberdade de ir and vir."

⁴⁴⁹ *Case of the Pueblo Bello Massacre v. Colombia. Merits, reparations and costs.* Judgment of January 31, 2006. Series C No. 140, para. 111, and *Case of Wong Ho Wing v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of June 30, 2015. Series C No. 297, para. 128.

⁴⁵⁰ Cf. *Case of the Pueblo Bello Massacre*, para. 120, and *Case of Rodríguez Vera et al. (Disappeared from the Palace of Justice)*, para. 518.

⁴⁵¹ See expert opinion of Jean Allain, (evidence file, folio 14921).

⁴⁵² In this regard, see the United Nations Guiding Principles on Business and Human Rights, Human Rights Council, U.N. Doc. A/HRC/17/31, of March 21, 2011.

other measure, States have the obligation to: (i) open, *ex officio* and immediately, an effective investigation that permits the identification, prosecution and punishment of those responsible, when a report has been filed or there is justified reason to believe that persons subject to their jurisdiction are subjected to one of the offenses established in Article 6(1) and 6(2) of the Convention; (ii) eliminate any laws that legalize or tolerate slavery and servitude; (iii) define such offenses under criminal law, with severe penalties; (iv) conduct inspections or other measures to detect such practices, and (v) adopt measure of protection and assistance for the victims.

320. The foregoing signifies that States must adopt comprehensive measures to act with due diligence in cases of servitude, slavery, trafficking and forced labor. In particular, States should have an appropriate legal framework and enforce it effectively, as well as prevention policies and practices that allow them to take effective measures when complaints are received. The prevention strategy should be comprehensive; in other words, it should prevent the risk factors and, at the same time, reinforce its institutions so that they can respond effectively to situations of contemporary slavery. In addition, States should take preventive measures in specific cases in which it is evident that certain groups of people may be victims of trafficking or slavery. This obligation is increased owing to the nature of the prohibition of slavery as a peremptory norm of international law (*supra* para. 249) and to the seriousness and intensity of the rights violations due to this practice.

321. The Court must now analyze whether the State responded adequately to the situation of slavery verified in this case. In other words, if it complied with the obligation to guarantee the rights protected by Article 6 of the American Convention, pursuant to Article 1(1) of this instrument. Determination of the victims' right of access to justice will be examined in the chapter on Articles 8(1) and 25(1) of the American Convention in relation to Articles 1(1) and 2 of this instrument.

B.10. Obligation of prevention and non-discrimination

322. The Court has established that the obligation of prevention encompasses all those measures of a legal, political, administrative and cultural nature that promote the safeguard of human rights and that ensure that any violations of these rights are effectively examined and treated as a wrongful act that, as such, is subject to penalties for those who commit it, as well as the obligation to compensate the victims for the adverse effects. It is also clear that the obligation to prevent is a duty of means or conduct and failure to comply with it is not proved by the mere fact that a right has been violated.⁴⁵³

323. According to the Court's case law, it is evident that a State cannot be responsible for every human rights violation committed among private individuals subject to its jurisdiction. Indeed, the State's treaty-based obligations of guarantee do not entail the unlimited responsibility of the State for every fact or act involving private individuals, because its duty to adopt measures of prevention and to protect private individuals in their relations among themselves is conditioned by its awareness of a situation of real and immediate risk for a specific individual or group of individuals and the reasonable possibilities of preventing or avoiding that risk. In other words, even though an act or omission of a private individual may have the legal consequence of the violation of certain human rights of another private individual, this cannot be automatically attributed to the

⁴⁵³ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, para. 166; *Case of Velásquez Paiz et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of November 19, 2015. Series C No. 307, para. 107.

State, because it is necessary to take into account the specific circumstances of the case and whether the said obligation to guarantee rights has been met.⁴⁵⁴

324. For the purposes of analyzing this specific case, however, the Court's consistent case law determines that, in order to establish the State's responsibility it is necessary to establish whether "at the time of the facts, the State authorities were aware or should have been aware of the existence of a situation that involved a real and immediate risk to the life of an individual or a group of individuals, and failed to take the necessary measures that fell within the scope of their authority to prevent or avoid that risk."

325. In this regard, in this case, the Court has verified the State's negligence and a series of shortcomings as regards preventing the occurrence of servitude, trafficking and slavery in its territory prior to 2000, but also following the specific report filed by the adolescents, Antônio Francisco da Silva and Gonçalo Luiz Furtado.

326. Since 1988, the *Comissão Pastoral da Terra* has filed various complaints concerning the existence of a situation similar to slavery in the state of Pará and, specifically, in Hacienda Brasil Verde. These complaints identified a *modus operandi* for the recruitment and exploitation of workers in the specific area in the south of the state of Pará. The State was aware of this situation because, as a result of these complaints, inspections of Hacienda Brasil Verde were conducted in 1989, 1992, 1993, 1996, 1997, 1999 and 2000. During several of these inspections, labor law violations were verified, together with degrading living and working conditions, and situations similar to slavery. These verifications resulted in the opening of labor and criminal proceedings; however, such proceedings were ineffective to prevent the situation verified in March 2000.⁴⁵⁵ Also, given the frequent complaints, the seriousness of the facts denounced, and the special obligation of prevention imposed on the State in relation to slavery, the State should have increased the inspections in this hacienda in order to eradicate the practice of slavery in this establishment.

327. Moreover, in addition to the known risk described above, the actual situation of risk was verified when the youths Antônio Francisco da Silva and Gonçalo Luiz Furtado were able to escape from Hacienda Brasil Verde and went to the Marabá Federal Police. On that occasion, after receiving the report of the adolescents about the offenses that were occurring in this hacienda, the fact that Antônio Francisco da Silva was still a minor, and the seriousness of the facts reported, the police merely indicated that they not could assist them because it was carnival time, and advised them to return two days later. This attitude was in open contradiction to the obligation of due diligence, especially considering that the reported facts referred to an offense as serious as slavery. On receiving information of the occurrence of slavery and violence against a child, the State had the obligation to take every possible measure to deal with these human rights violations. By failing to proceed in this way, it violated the State obligation to prevent the occurrence of slavery in its territory.

328. Even though the State was fully aware of the danger faced by the workers subjected to slavery or forced labor in the state of Pará⁴⁵⁶ and specifically in Hacienda Brasil Verde,⁴⁵⁷

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

⁴⁵⁵ The detailed analysis of these proceedings will be made in the following chapter; for now, the Court notes that these initiatives were insufficient and did not lead to identifying anyone's responsibility.

⁴⁵⁶ See, *inter alia*, Statement by the President of the Republic, Fernando Henrique Cardoso, of June 27, 1995 (evidence file, folio 7108).

⁴⁵⁷ See, communication No. 2,357/2001 of the Head Prosecutor of the Eighth Regional Labor Prosecution Service of June 21, 2001 (evidence file, folios 1031 to 1036).

it has not proved that, prior to March 2000, it had adopted effective measures to prevent this practice and subjection of human beings to the degrading and inhumane conditions that have been identified. Although the obligation of prevention is one of means and not of results, the State has not demonstrated that the public policies adopted between 1995 and 2000 and the previous inspections conducted by Ministry of Labor officials, even though they were necessary and reveal a commitment by the State, were sufficient and effective to prevent the subjection of 85 workers to slavery in Hacienda Brasil Verde (first example of the need to comply with the obligation of prevention). In addition, when it received the report of violence and subjection to a situation of slavery, the State failed to react with the due diligence required by the seriousness of the facts, the victims' situation of vulnerability, and its international obligation to prevent slavery (second example of the need to comply with the obligation of prevention following the two reports filed).

B.11. The rights of the child

329. From the facts recounted to the March 2000 inspection, it can be observed that Antônio Francisco da Silva, who escaped from the hacienda and, after an enormous effort, was able to report the existence of a situation of slavery, threats and violence in Hacienda Brasil Verde, was a minor at that time (*supra* paras. 174, 175 and 299). Antônio Francisco da Silva testified before the Court that he had reported this fact to both the Federal Police and the *Comissão Pastoral da Terra* .

330. The Court underscores that children are holders of the rights established in the American Convention, in addition to being guaranteed the special measures of protection established in Article 19 of the Convention, to be defined in keeping with the particular circumstances of each specific case.⁴⁵⁸ Article 19 of the Convention establishes the obligation to adopt special measures of protection in favor of all children based on their condition as such, and this has an impact on the interpretation of all the other rights when a case relates to children. Accordingly, the Court has considered that the protection due to the rights of the child, as subjects of law, must take into consideration their intrinsic characteristics and the need to foster their development, offering them the necessary conditions to live and develop their aptitudes taking full advantage of their potential.⁴⁵⁹ When examining the rights of the child, the Court will have recourse to the international *corpus iuris* for the protection of children, as it has on previous occasions,⁴⁶⁰ to define the content and scope of the obligations assumed by the State.

331. The provisions of the Convention on the Rights of the Child and ILO Conventions Nos. 138 and 182⁴⁶¹ incorporate the *corpus iuris* in this regard. Article 32 of the Convention on the Rights of the Child establishes that "States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development." The same article indicates that States Parties shall "provide for a minimum age for admission to employment." Meanwhile,

⁴⁵⁸ *Case of Gelman v. Uruguay. Merits and reparations.* Judgment of February 24, 2011. Series C No. 221, para. 121, and *Case of Expelled Dominicans and Haitians v. Dominican Republic. Preliminary objections, merits, reparations and costs.* Judgment of August 28, 2014. Series C No. 282, para. 269.

⁴⁵⁹ *Cf. Juridical Status and Human Rights of the Child.* Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 61; *Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection.* Advisory Opinion OC-21/14 of August 19, 2014. Series A No. 21, para. 66, and *Case of Rochac Hernández*, para. 106.

⁴⁶⁰ *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits*, para. 194, and *Case of Rochac Hernández et al.*, para. 106.

⁴⁶¹ ILO, Convention No. 138 concerning Minimum Age for Admission to Employment (Entry into force: June 19, 1976); Convention No. 182, Preamble and Article 3.

article 3 of ILO Convention 138 indicates that “[t]he minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons shall not be less than 18 years.” Similarly, ILO Convention 182 establishes 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 labour,” and “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 among the worst forms of child labor.⁴⁶²

332. In this regard, the Court emphasizes that the obligations that the State must meet in order to eliminate the worst forms of child labor are a priority and include the design and implementation of programs of action to ensure children the full enjoyment and exercise of their rights.⁴⁶³ Specifically, States have the obligation to: (i) prevent the engagement of children in the worst forms of child labour; (ii) provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration; (iii) ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour; (iv) identify and reach out to children at special risk; and (v) take account of the special situation of girls.⁴⁶⁴

333. The facts of this case leave no doubt that Antônio Francisco da Silva was subjected to the forms of child labor indicated above because, as previously determined, he was a victim of slavery. Therefore, when it became aware of the concrete situation of violence and slavery to which the minor had been subjected, and the possibility that other minors were in the same situation, as well as the egregious nature of the facts involved, the State should have adopted effective measures to end the situation of slavery that had been identified and to ensure the rehabilitation and social integration of Antônio Francisco da Silva, as well as his access to basic education and, if possible, vocational training.

B.12. Structural discrimination

334. Regarding structural discrimination, the Court points out that the representatives included the alleged violation of Article 24 of the Convention (Right to Equal Protection) in their brief with final arguments, even though they failed to submit any argument or explanation for this inclusion and change in position. Accordingly, the Court recalls that, while the general obligation under Article 1(1) refers to the State’s obligation to respect and ensure the rights contained in the American Convention “without discrimination,” Article 24 protects the right to equal protection of the law.⁴⁶⁵ In other words, Article 24 of the American Convention prohibits factual or legal discrimination, not only with regard to the rights contained in this treaty, but also with regard to all the laws enacted by the State and their implementation.⁴⁶⁶ This means that, if a State discriminates in the respect and guarantee of a treaty-based right, it would be failing to comply with the obligation established in Article 1(1) and the substantive right in question. If, to the contrary, the discrimination refers to an unequal protection under domestic law or its application, the fact

⁴⁶² ILO, Convention No. 182, Article 3.

⁴⁶³ Cf. Convention on the Rights of the Child, Articles 7, 8, 9, 11, 16, 18 and 32.

⁴⁶⁴ ILO, Convention No. 182, Article 7.

⁴⁶⁵ Cf. *Proposed Amendments to the Naturalization Provision of the Constitution of Costa Rica*. Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4, paras. 53 and 54, and *Case of Duque v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of February 26, 2016. Series C No. 310, para. 94.

⁴⁶⁶ Cf. *Case of Yatama v. Nicaragua. Preliminary objections, merits, reparations and costs*. Judgment of June 23, 2005. Series C No. 127, para. 186, and *Case of Duque*, para. 94.

should be analyzed in light of Article 24 of the American Convention⁴⁶⁷ in relation to the categories protected by Article 1(1) of the Convention.

335. Furthermore, in relation to Article 1(1) of the Convention, the Court has established that this is a norm of a general nature, the content of which extends to all the provisions of the treaty, and establishes the obligation of the States Parties to respect and ensure the free and full exercise of the rights and freedoms recognized therein "without any discrimination." In other words, whatsoever its origin or form, any treatment that could be considered discriminatory in relation to the exercise of any of the rights guaranteed in the Convention is, *per se*, incompatible with this instrument.⁴⁶⁸ The State's non-compliance with the general obligation to respect and ensure human rights by any discriminatory treatment results in its international responsibility.⁴⁶⁹ This is why there is an indissoluble link between the obligation to respect and to ensure human rights and the principle of equality and non-discrimination.⁴⁷⁰ In this regard, the Court stresses that, unlike other human rights treaties, the "economic status" of the individual is one of the causes of discrimination prohibited by Article 1(1) of the American Convention.

336. The Court has indicated that "States must refrain from undertaking actions that are in an way aimed, directly or indirectly, at creating situations of discrimination *de jure* or *de facto*."⁴⁷¹ States are obliged "to adopt positive measures to revert or modify any discriminatory situations in their societies that prejudice a specific group of people. This entails the special duty of protection that the State must exercise with regard to acts and practices of third parties who, with its tolerance or acquiescence, create, maintain or promote discriminatory situations."⁴⁷²

337. The Court has established that anyone in a position of vulnerability is owed special protection, due to the special duties that the State must fulfill to satisfy the general obligation to respect and to guarantee human rights. The Court recalls that it is not sufficient that States merely abstain from violating rights; rather, it is essential that they adopt positive measures, determined on the basis of the particular needs for protection of the subject of law due to his personal situation or to the specific situation in which he finds himself,⁴⁷³ such as extreme poverty or marginalization.⁴⁷⁴

⁴⁶⁷ Cf. *Case of Apitz Barbera et al. ("First Administrative Contentious Court")*, para. 209, and *Case of Duque*, para. 94.

⁴⁶⁸ Cf. *Proposed Amendments to the Naturalization Provision of the Constitution of Costa Rica*, para. 53; and *Case of Duque*, para. 94.

⁴⁶⁹ Cf. *Juridical Status and Rights of Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, para. 85; and *Case of Duque*, para. 94.

⁴⁷⁰ Cf. *Juridical Status and Rights of Undocumented Migrants*, para. 85; and *Case of Duque*, para. 94.

⁴⁷¹ *Juridical Status and Rights of Undocumented Migrants*, para. 103, and *Case of Duque*, para. 92.

⁴⁷² Cf. *Juridical Status and Rights of Undocumented Migrants*, para. 104, and *Case of Duque*, para. 92.

⁴⁷³ Cf. *Case of the "Mapiripán Massacre" v. Colombia*. Judgment of September 15, 2005. Series C No. 134, paras. 111 and 113, and *Case of Chinchilla Sandoval*, para. 168.

⁴⁷⁴ Cf. *Case of the Sawhoyamaya Indigenous Community v. Paraguay. Merits, reparations and costs*. Judgment of March 29, 2006. Series C No. 146, para. 154. The Court has also indicated that "States must take into account that the groups of individuals who live in adverse circumstances and with less resources, such as those who live in conditions of extreme poverty, at-risk children and adolescents, and indigenous peoples, face an increased risk of suffering from mental disabilities [...]. The connection that exists between disability, on the one hand, and poverty and social exclusion, on the other, is direct and significant. Consequently, among the positive measures that the State should take are those required to prevent all preventable forms of disability and provide those who suffer from mental disabilities with the appropriate preferential treatment." *Case of Ximenes Lopes v. Brazil*. Judgment of July 4, 2006. Series C No. 149, para. 104. In the case of *Xákmok Kásek* the Court considered that "extreme poverty and lack of adequate medical care for pregnant and post-partum women are the causes of high maternal mortality and morbidity." *Case of the Xákmok Kásek Indigenous Community v. Paraguay. Merits, reparations and costs*. Judgment of August 24, 2010. Series C No. 214, para. 233.

338. The Court finds that the State incurs international responsibility when, faced with the existence of structural discrimination, it fails to adopt specific measures with regard to the particular situation of victimization that reveals the vulnerability of a universe of individualized persons. It is the victimization of such persons that exposes their particular vulnerability, and this calls for specific protective actions that were omitted in the case of the individuals recruited to work in Hacienda Brasil Verde.

339. In this case, the Court notes some characteristics of specific victimization shared by the 85 workers rescued on March 15, 2000: they were poor; they came from the poorest regions of the country, with the lowest human development and possibilities of work and employment, and they were illiterate with little or no schooling (*supra* para. 41). This placed them in a situation that made them more susceptible to recruitment by means of false promises and deception. This situation of imminent risk for a specific group of people with identical characteristics, from the same regions of the country, had historical roots and had been known since, at least, 1995 when the Brazilian Government expressly acknowledged the existence of "slave labor" in the country (*supra* para. 111).

340. The evidence provided to the case file reveals the existence of a situation that characterized discriminatory treatment based on the economic status of the victims rescued on March 15, 2000. According to several reports of the ILO and of the Brazilian Ministry of Labor, "it is the worker's miserable situation that leads him, spontaneously, to accept the working conditions that are offered,"⁴⁷⁵ and "the worse the living conditions, the more willing workers are to take the risks inherent in accepting work far from home. [...] Poverty, therefore, is the main factor behind modern-day slavery in Brazil, since it increases the vulnerability of a significant portion of the population, making them easy prey for enticers of slave labor."⁴⁷⁶

341. Having verified this situation, the Court finds that the State failed to take into account the vulnerability of the 85 workers rescued on March 15, 2000, owing to discrimination based on their economic status. This constitutes a violation of Article 6(1) of the American Convention, in relation to Article 1(1) of this instrument, to their detriment.

B.13. Conclusion

342. Based on all the foregoing, Brazil has not proved that it had taken, with regard to this case and at the time of the facts, the specific measures – in accordance with the circumstances of which it was aware of workers in a situation of slavery and of specific complaints against Hacienda Brasil Verde – to prevent the occurrence of the violation of Article 6(1) verified in this case. The State failed to act promptly in the initial hours and days following the report of slavery and violence filed by Gonçalo Luiz Furtado and Antônio Francisco da Silva, at great personal sacrifice and risk, losing valuable hours and days. Over the period between the report and the inspection, the State failed to coordinate the active participation of the Federal Police in the said inspection, other than for the protection of the Ministry of Labor's team. Everything shows that the State failed to act with the required due diligence to prevent adequately the contemporary form of slavery verified in this case and did not act as could reasonably be expected, based on the circumstances of the case, to terminate that type of violation. This failure to comply with the obligation to ensure rights is particularly egregious owing to the context that the State was aware of and

⁴⁷⁵ Ministry of Labor and Employment. Manual to combat work in conditions similar to those of slavery. November 2011, p. 13 (evidence file, folio 6714).

⁴⁷⁶ ILO – Brazil. *Fighting forced labour: the example of Brazil*, 2010, p. 34 (evidence file, folio 8529).

the obligations imposed by Article 6(1) of the American Convention and specifically derived from the *jus cogens* nature of the prohibition.

343. On this basis, the Court considers that the State violated the right not to be subjected to slavery and 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 this instrument, to the detriment of the 85 workers rescued on March 15, 2000, in Hacienda Brasil Verde, and listed in paragraph 206 of this judgment. Additionally, with regard to Antônio Francisco da Silva, that violation also occurred in relation to Article 19 of the American Convention, since he was a minor at the time of the facts. Lastly, Brazil is responsible for the violation of Article 6(1) of the American Convention, in relation to Article 1(1) of this instrument, that occurred in the context of a situation of historical structural discrimination based on the economic status of the 85 workers identified in paragraph 206 of this judgment.

VIII-2

THE RIGHTS TO JUDICIAL GUARANTEES⁴⁷⁷ AND TO JUDICIAL PROTECTION⁴⁷⁸

344. In this chapter, the Court will proceed to examine the arguments submitted by the parties and will develop pertinent legal considerations concerning the alleged violations of the rights to judicial guarantees and to judicial protection. To this end, it will make its analysis in the following order: (a) the alleged lack of due diligence; (b) the alleged

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 non-appealable 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. 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.

violation of the reasonable time in the criminal proceedings, and (c) the alleged absence of effective judicial protection. The Court will also analyze the investigations conducted into the alleged disappearance of Iron Canuto da Silva and Luis Ferreira da Cruz.

A. Arguments of the parties and of the Commission

345. The **Commission** considered that the State was responsible for failing to adopt measures to protect the judicial guarantees within a reasonable time. In this regard, the Commission indicated that the State was responsible for the violation of Article 8 of the Convention by failing in its duty to prevent and to investigate slave labor because, despite being aware of the existence of this situation in Hacienda Brasil Verde since 1988 owing to the reports that had been presented, it was not diligent in determining responsibilities for the facts.

346. The Commission indicated that the criminal proceedings that were opened in June 1997 and concluded in 2008 were characterized by structural factors of impunity; namely: (i) the existence of an unjustified delay due to the conflict of competences between the federal and state jurisdictions that lasted for almost 10 years; (ii) the absence of a real willingness to investigate with due diligence; (iii) the option given to the owner of the hacienda to suspend the proceedings in exchange for him providing a basic basket of commodities to the victims, and (iv) the extinguishment of the possibility of punishment owing to the statute of limitations, even though, pursuant to the Court's case law, the conducts of slavery and forced labor constitute egregious human rights violations that should not be subject to this mechanism.

347. The Commission also considered that the State was responsible for the violation of Article 25 of the Convention because, even though it was aware of the existing situation in Hacienda Brasil Verde, since 1989, the victims did not have effective judicial mechanisms to protect their rights, punish those responsible, and obtain reparation, because a complete and effective investigation was not conducted to identify those responsible for the facts, and an effective judicial remedy was not guaranteed to protect the workers from acts that violated their rights. The Commission added that the situation of impunity that reigned in this case persists to date.

348. The Commission alleged that the State had failed to ensure access to justice, determination of the truth of the facts, investigation and punishment of those responsible, and reparation for the consequences of the violations.

349. In addition, the Commission argued that the case provided examples of specific actions in access to justice that fall within the definition of structural discrimination because, not only was there a failure to institute criminal proceedings when labor irregularities were found, but when the labor proceedings were opened, a conciliation agreement was reached with the owner of the hacienda, without taking the victims into consideration and, in this agreement, the authorities underscored that, if the accused engaged in slave labor practices again, he would have to pay a fine for each worker, whether they were "white or black."

350. Finally, the Commission indicated that the application of the statute of limitations to the crime of subjection to slave labor was incompatible with the Brazilian State's international obligations; also, that the domestic law that permits the prescription of this crime could not continue to be an obstacle for the investigation of the facts and the punishment of those responsible. 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** indicated that the Brazilian State was responsible for violating the right to judicial protection established in Article 8 of the Convention of the individuals who worked in Hacienda Brasil Verde because, even though it was aware of the existence of acts that constituted reduction to conditions similar to slavery, it failed in its obligation to investigate these acts within a reasonable time. They also argued that the State had not acted with the urgency that the case warranted to remove the victims from the situation that violated their rights.

352. The representatives also emphasized that, although 18 years had passed, absolute impunity existed with regard to the alleged facts, because the State had failed to comply with its obligation to investigate egregious human rights violations within a reasonable time. Therefore, it was internationally responsible for the "continuing violation" of the judicial guarantees protected by Article 8 of the Convention, to the detriment of the individuals who were working in Hacienda Brasil Verde prior to December 10, 1998. Lastly, the representatives indicated that the State had not complied with the requirement to conduct an exhaustive investigation *ex officio* or the guarantee of due diligence.

353. In addition, the representatives indicated that the Brazilian State was responsible for violating the judicial guarantees established in Article 25 of the Convention, to the detriment of the individuals who were working in Hacienda Brasil Verde, by failing to comply with its duty to investigate the acts diligently and exhaustively. Moreover, they indicated that the victims had not received any protection for their physical safety, and the authorities did not provide them with any counseling on comprehensive assistance. The representatives indicated that the victims had not participated in the proceedings, and thus had been unable to assert their rights.

354. In addition, the representatives argued that the contemporary forms of slavery are gross human rights violations, and their absolute prohibition by international law is a norm of *jus cogens*; therefore, the application of the statute of limitations was inadmissible. According to the representatives, the facts remained in impunity due, in great measure, to the prescription of the crimes for which criminal proceedings could have been opened.

355. The representatives also indicated that the failure of the authorities to take effective steps to respond to the complaints, and the recurrence of the reported facts, revealed a situation of structural discrimination in the State's response that permitted the perpetuation of a situation of exploitation of a specific group of persons. Lastly, the representatives argued that the State had the duty to act and to investigate with urgent diligence because the authorities had been made aware that there could be children and adolescents in Hacienda Brasil Verde.

356. The **State** argued that the Commission had not indicated clearly and specifically the grounds for the violation of the obligation to respect judicial guarantees, and added that the State could not be held responsible for the possible failure of the criminal investigation and prosecution.

357. The State also indicated that it had acted with due diligence during the different visits to inspect Hacienda Brasil Verde and that, during the said inspections, the State agents had performed their functions adequately and determined that slave labor was not practiced and nor were there conditions similar to slavery.

358. In addition, the State indicated that there were elements that justified the delay in the criminal proceedings initiated in 1997, and that these referred to factors of special complexity. For example, the accused lived in towns other than the place where the

criminal action was filed; the authorities were unaware of Mr. Quagliato Neto's domicile; the geographical distance made it complicated to obtain evidence, and there was "absolutely no legal definition" of the who had competence to process the crime of reduction to conditions similar to slavery.

359. The State indicated that the investigation procedures conducted by the Public Prosecution Service were adequate and effective mechanisms for criminal investigations and prosecutions. It indicated that the inspections conducted in Hacienda Brasil Verde had not led to the conclusion that slave labor existed, and that the administrative infractions verified, such as degrading conditions and extenuating working days, could not be characterized as crimes under the laws in force at that time.

360. Lastly, the State argued that the Public Prosecution Service had competence to conduct autonomous criminal investigation procedures, as in this case, and these procedures should also be considered adequate and effective remedies for the investigation of crimes that represent violations of the American Convention.

B. Considerations of the Court

361. Before beginning to analyze the arguments, the Court recalls that, in this case, its contentious jurisdiction is limited to the judicial actions that began or have continued since the State's acceptance of this jurisdiction on December 10, 1998. The Court will not examine the proceedings that took place in 1989, 1992, 1993 and 1996 because they had concluded before the State accepted the Court's jurisdiction; nevertheless, it may take them into account as context. Accordingly, in this chapter, the Court will analyze the actions taken after December 10, 1998: (i) in criminal proceeding No. 1997.39.01.831-3 and the public civil action, both initiated in 1997, in relation to the inspection of March 10, 1997, and (ii) the proceedings initiated by virtue of the inspection of March 15, 2000.

B.1. Due diligence

362. The Court recalls that, since protection against slavery and conditions similar to slavery is an international obligation *erga omnes* (*supra* para. 249), derived from the principles and rules concerning the basic rights of the human being, when States are aware of an act that constitutes slavery, servitude or trafficking, in the terms of Article 6 of the American Convention, they should open *ex officio* the pertinent investigation in order to establish the corresponding individual responsibilities.⁴⁷⁹

363. In this case, the State had an obligation to act with due diligence and this was increased owing to the gravity of the facts that had been reported and the nature of the obligation. The State should have acted diligently to prevent the facts remaining unpunished, as occurred in this case.

364. The Court reiterates that exceptional due diligence was required in this case, due to the particular situation of vulnerability of the Hacienda Brasil Verde workers and the extreme gravity of the situation reported to the State. Consequently, it was essential to take the pertinent measures in order to avoid delays in processing the proceedings to ensure a prompt decision and its execution.⁴⁸⁰ In this regard, the European Court has also indicated that special diligence is required in cases in which the integrity of an individual is at stake, and that States have a positive obligation "requiring the penalization and effective prosecution of any act aimed at maintaining a person in [a] situation" of slavery, servitude

⁴⁷⁹ Cf. *Case of the Río Negro Massacres*, para. 225.

⁴⁸⁰ Cf. *Case of Gonzales Lluy et al.*, para. 311.

or forced or compulsory labor⁴⁸¹. That court has also established that the requirement to investigate trafficking in persons “does not depend on a complaint; rather, once the matter has come to the attention of the authorities they must act of their own motion.” Lastly, it has indicated that the requirement of due diligence is “implicit in all cases, but where the possibility of removing the individual from the harmful situation is available, the investigation must be undertaken as a matter of urgency.”⁴⁸²

365. In order to examine due diligence, the Court will now make a brief summary of the actions in the criminal proceedings: on March 10, 1997, José da Costa Oliveira and José Ferreira dos Santos made a statement before the Pará Federal Police Department, Marabá Delegation, in which they declared that they had worked in and escaped from Hacienda Brasil Verde (*supra* para. 143). As a result of the Ministry of Labor’s report, on June 30, 1997, the Federal Public Prosecution Service filed criminal charges against Raimundo Alves de Rocha, Antônio Alves Vieira and João Luiz Quagliato Neto (*supra* para. 145). On September 23, 1999, at the request of the Public Prosecution Service, the federal judge authorized a two-year conditional suspension of the proceedings filed against João Luiz Quagliato Neto (*supra* para. 149). On March 16, 2001, the substitute federal judge in charge of the case declared the absolute lack of jurisdiction of the federal system of justice to hear the proceedings (*supra* para. 151). On August 8, 2001, the proceedings were re-opened by the state system of justice of Xinguará, and on October 25, 2001, the Prosecution ratified the complaint. Subsequently, on May 23, 2002, the judge admitted the complaint. On November 8, 2004, the state system of justice declared itself incompetent to hear the criminal proceedings, and this gave rise to a conflict of competences. On September 26, 2007, the Superior Court of Justice advised that it was the federal jurisdiction that had competence. On December 11, 2007, the case file was forwarded to the federal jurisdiction of Marabá, Pará (*supra* para. 155).

366. On July 10, 2008, a Pará federal judge handed down his ruling and declared that, taking into account that more than 10 years had passed since the complaint had been filed, that the maximum penalty that could be applied was eight years, and that the statute of limitations for the penalty was 12 years, prescription would not apply only if the accused were sentenced to the maximum penalty. In this regard the judge asserted that it was fairly improbable that the accused would be sentenced to this penalty, so that prescription was inevitable. On this basis, as well as owing to the State’s lack of action, the principles of procedural economy and criminal policy, the judge decided to declare the criminal action against Raimundo Alves da Rocha and Antônio Alves Vieira extinct (*supra* para. 157).

367. The Court finds that there was a delay in the implementation of the proceedings, and that the conflicts of competence and the failure of the judicial authorities to act diligently resulted in delays in the criminal proceedings. The Court considers that the State has not proved that there was any justification for the inaction of the judicial authorities, the long periods of time during which nothing was done, the prolonged delay in the criminal proceedings, and the delay arising from the conflicts of competence. Consequently, the Court considers that the judicial authorities did not employ due diligence to reach a decision in the criminal proceedings.

368. Taking into account: (i) that in this case the integrity of the Hacienda Brasil Verde workers was in danger; (ii) the consequent urgency as a result of their situation of working in conditions similar to slavery, and (iii) the importance of deciding the proceedings in

⁴⁸¹ ECHR, *Case of Siliadin v. France*. No. 73316/01. Judgment of July 26, 2005, para. 112, and *Case of Rantsev v. Cyprus and Russia*. No. 25965/04. Judgment of January 7, 2010, para. 285.

⁴⁸² ECHR, *Rantsev v. Cyprus and Russia*. No. 25965/04. Judgment of January 7, 2010, para. 288, and *C.N. v. The United Kingdom*. No. 4239/08. Judgment of November 13, 2012, para. 69.

order to make reparation to the workers, as well as to halt the situation of slavery that existed in the haciendas, the Court considers that the State had a special obligation to act with due diligence and that it failed to comply with this obligation. Consequently, the Court concludes that the State violated the judicial guarantee of due diligence established in Article 8(1) of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, to the detriment of the 43 Hacienda Brasil Verde workers who were found during the inspection of April 23, 1997, and who have been identified by the Court in this judgment (*supra* para. 199).

B.2. Reasonable time

369. With regard to the promptness of the proceedings, the Court has indicated that the “reasonable time” referred to in Article 8(1) of the Convention must be assessed in relation to the total duration of the proceedings until a final judgment is handed down.⁴⁸³ The right of access to justice implies that a dispute must be decided within a reasonable time,⁴⁸⁴ because a prolonged delay may, of itself, constitute a violation of the judicial guarantees.⁴⁸⁵

370. Regarding the presumed failure to comply with the judicial guarantee of reasonable time in the criminal proceedings, the Court will examine the four criteria it has established in its case law in this regard: (i) the complexity of the matter; (ii) the procedural activity of the interested party; (iii) the conduct of the judicial authorities, and (iv) the effects generated on the legal situation of the person involved in the proceedings.⁴⁸⁶ The Court recalls that it corresponds to the State to justify, based on these criteria, why it has required the time that has elapsed in order to hear the case and, if it fails to do so, the Court has broad powers to reach its own conclusions in this regard.⁴⁸⁷

371. In this case, the criminal proceedings relating to the April 1997 inspection began with the complaint filed by the Federal Public Prosecution Service in June that year and concluded with the declaration of prescription in 2008 (*supra* para. 157); thus, the proceedings lasted approximately 11 years. Consequently, the Court will now determine whether the time that passed was reasonable based on the criteria established in its case law.

i) Complexity of the matter

372. This Court has taken into account different criteria to determine the complexity of a proceeding. These include the complexity of the evidence, the plurality of the procedural subjects or the number of victims, the time that has passed since the violation, the characteristics of the remedy established in domestic law, and the context in which the violation occurred.⁴⁸⁸

⁴⁸³ Cf. *Case of Suárez Rosero v. Ecuador. Merits*. Judgment of November 12, 1997. Series C No. 35, para. 71, and *Case of Quispialaya Vilcapoma*, para. 176.

⁴⁸⁴ Cf. *Case of Suárez Rosero v. Ecuador. Merits*, para. 71, and *Quispialaya Vilcapoma*, para. 176.

⁴⁸⁵ Cf. *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago. Merits, reparations and costs*. Judgment of June 21, 2002. Series C No. 94, para. 145, and *Case of Tenorio Roca*, para. 237.

⁴⁸⁶ Cf. *Case of Valle Jaramillo et al. v. Colombia. Merits, reparations and costs*. Judgment of November 27, 2008. Series C No. 192, para. 155, and *Case of Tenorio Roca*, para. 238.

⁴⁸⁷ Cf. *Case of Anzualdo Castro v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of September 22, 2009. Series C No. 202, para. 156, and *Case of Quispialaya Vilcapoma*, para. 178.

⁴⁸⁸ Cf. *inter alia*, *Case of Genie Lacayo v. Nicaragua. Preliminary objections*. Judgment of January 27, 1995. Series C No. 21, para. 78, and *Case of Quispialaya Vilcapoma*, para. 179.

373. The Court observes that, in this case, the characteristics of the proceedings were not particularly complex. The complaints filed against Raimundo Alves de Rocha, Antônio Alves Vieira and João Luiz Quagliato Neto were based on the April 1997 inspection at Hacienda Brasil Verde, and the Federal Public Prosecution Service had sufficient information to file the complaints. Also, the plurality of procedural subjects did not represent a problem as they were a specific, closed group. The Court does not find any particular reasons that could substantiate a special complexity of the case that would justify the proceedings lasting more than 10 years.

ii) *Procedural activity of the interested party*

374. In this case, the Court finds no evidence that would allow it to infer that there had been any type of conduct or action by the interested parties that would have retarded the proceedings. To the contrary, the Court notes that the workers found during the 1997 inspection, which originated the criminal complaint of June 1997, were unable to take part in the proceedings held for the facts verified in Hacienda Brasil Verde.

375. In this regard, the Court recalls that, in relation to the exercise of the right to judicial guarantees recognized in Article 8 of the American Convention, the Court has established, *inter alia*, that "it is necessary to comply with all the requirements that protect, ensure or assert the ownership or exercise of a right; that is, the conditions that must be met to ensure the adequate representation or control of the interests or the claims of those whose rights or obligations are subject to judicial consideration."⁴⁸⁹

376. The Court also recalls that, according to the right recognized in Article 8(1) of the American Convention, in relation to Article 1(1) of this instrument, States have the obligation to ensure the right of the victims or their next of kin to participate in all stages of proceedings that concern them so that they may make proposals, receive information, provide evidence, submit arguments and, in sum, assert their rights.⁴⁹⁰ The purpose of this participation should be access to justice, to know the truth about what occurred, and to obtain fair reparation.⁴⁹¹ However, the effective search for the truth corresponds to the State and does not depend on the procedural initiative of the victim or the next of kin, or on the contribution of probative elements by private individuals.⁴⁹² In this case, the Federal Public Prosecution Service was in charge of the criminal action, because the crime was subject exclusively to a "public criminal action."

iii) *Conduct of the judicial authorities*

377. The Court recalls that, in this case, the criminal complaint was filed on June 30, 1997, and it was not until September 13, 1999, that the preliminary hearing of the accused, Quagliato Neto, was held (*supra* para. 149). Subsequently, on March 16, 2001, the federal judge declared his lack of competence to hear the case and sent the case file to the Pará state jurisdiction. On May 28, 2002, the criminal action against João Luiz Quagliato Neto was declared extinct, and on November 8, 2004, the state judge declared his lack of jurisdiction to hear the case and returned the case file to the federal jurisdiction. During the long periods between these actions no procedures of any procedural relevance

⁴⁸⁹ Cf. *Judicial Guarantees in States of Emergency* (Arts. 27.2, 25 and 8 American Convention on Human Rights). *Advisory Opinion* OC-9/87 of October 6, 1987. Series A No. 9, para. 28, and *Case of J*, para. 258.

⁴⁹⁰ Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits*, para. 246, and *Case of the Río Negro Massacres*, para. 193.

⁴⁹¹ Cf. *Case of Valle Jaramillo et al.*, para. 233, and *Case of the Río Negro Massacres*, para. 193.

⁴⁹² Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, para. 177, and *Case of the Río Negro Massacres*, para. 193.

were conducted. On September 26, 2006, the Superior Court of Justice determined that the federal jurisdiction had competence in the case and the case file was forwarded to the Marabá Federal Trial Court. Finally, on July 10, 2008, the Federal Public Prosecution Service submitted its final arguments and requested the extinction of the criminal action against Raimundo Alves de Rocha and Antônio Alves Vieira. On the same day, the federal judge declared that the criminal action against them had extinguished in application of a particular usage of the statute of limitations (*supra* paras. 156 and 157).

378. Based on the above, this Court finds that there were delays in the criminal proceedings resulting from the conflicts of competence and the failure of the judicial authorities to act diligently. The Court considers that no reasons have been presented to explain the inaction of the judicial authorities or the delay resulting from the conflicts of competence. Accordingly, the Court considers that the judicial authorities did not ensure, with due diligence, that a reasonable time was respected in the criminal proceedings.

379. Regarding the prescription of the criminal action, the Court observes that the statute of limitations was applied pursuant to the interpretation of the laws of Brazil in force at the time of the facts. Nevertheless, the Court notes that this was decided because “more than 10 years had passed since the complaint had been filed, that the maximum penalty that could be applied was eight years, and that the statute of limitations for the penalty was 12 years, [so that] prescription would not apply only if the accused were sentenced to the maximum penalty.” The passage of time that eventually led to the application of the statute of limitations was the result of the lack of diligence of the Brazilian judicial authorities who were responsible for taking the necessary measures to investigate, prosecute and punish, as appropriate, those responsible;⁴⁹³ thus, it is a matter that can be attributed to the State. Consequently, the Court considers that the authorities did not exercise due diligence to ensure the advance of the proceedings, and this culminated in the prescription of the criminal action.

iv) *Effects generated on the legal situation of the person involved in the proceedings, and impact on his or her rights*

380. The Court recalls that, to determine whether the duration of the proceedings is reasonable, the effects of this duration on the legal situation of the person concerned must be taken into account, considering, among other elements, the purpose of the dispute. The Court has established that, if the passage of time has a relevant impact on a person’s legal situation, the proceedings must advance with greater diligence so that the case is decided promptly.⁴⁹⁴

381. In this case, the Court notes that a ruling in the criminal proceedings against Raimundo Alves de Rocha, Antônio Alves Vieira and João Luiz Quagliato Neto, would have had an impact on the award of reparations to the workers subjected to conditions of slavery in Hacienda Brasil Verde. Owing to the absence of a ruling in these proceedings, no reparations were granted, and this had an impact on the said workers who received no compensation of any type for the conditions in which they had been kept in Hacienda Brasil Verde.

382. Having analyzed the four elements to determine the reasonableness of the duration of the criminal proceedings, and bearing in mind that there was an obligation to act with particular due diligence considering the situation of the Hacienda Brasil Verde workers and the extreme seriousness of the facts denounced, the Court concludes that the State

⁴⁹³ Cf. *Case of Ximenes Lopes*, para. 199, and *Case of Gonzales Lluy et al.*, para. 306.

⁴⁹⁴ Cf. *Case of Valle Jaramillo et al.*, para. 155, and *Case of Gonzales Lluy et al.*, para. 309.

violated the judicial guarantee of a reasonable time established in Article 8(1) of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, to the detriment of the 43 Hacienda Brasil Verde workers who were found during the April 23, 1997, inspection and who have been identified by the Court in this judgment (*supra* para. 199).

B.3. Absence of effective judicial protection

383. The Court will now analyze the alleged violaci3n of the right to judicial protection. To this end, the Court will evaluate: (i) whether the proceedings opened in 1997, 2000 and 2001 were effective remedies to investigate and punish those responsible for the facts verified in Hacienda Brasil Verde, and whether an effective remedy existed to make reparation to the presumed victims; (ii) the prescription of the proceedings and its compatibility with the obligations derived from international law, and (iii) the alleged discrimination in relation to the presumed victims' access to judicial protection.

384. In this case, the Court notes that in 1997, 2000 and 2001, two criminal actions, one civil action and one labor proceeding were instituted in relation to the situation of the Hacienda Brasil Verde workers. The Court will now examine these proceedings to determine whether the State guaranteed the victims the judicial protection established in Article 25(1) of the Convention. To this end, it will summarize the actions verified in each proceeding.

385. The Court recalls that, as a result of the Ministry of Labor's report, on June 30, 1997, the Federal Public Prosecution Service filed a criminal complaint against Raimundo Alves de Rocha, Ant3nio Alves Vieira and Jo3o Luiz Quagliato Neto. On July 10, 2008, the Par3 federal judge declared that the statute of limitations would not apply only if they were sentenced to the maximum penalty and, therefore, that the prescription of the action was inevitable. On this basis, as well as on the State's lack of action, the judge decided to declare that the criminal action had extinguished (*supra* para. 157).

386. Regarding the labor proceeding, the Court recalls that on August 12, 1997, an administrative proceeding was opened by the Eighth Region's Regional Labor Public Prosecutor (PRT). On November 14, 1997, with regard to Hacienda Brasil Verde, the Par3 Regional Labor Delegation advised that even though some deficiencies existed, it had "prefer[red] not to act, but rather to provide advice [...]" (*supra* para. 159). On October 13, 1998, the Labor Public Prosecutor asked the Par3 Regional Labor Delegation to conduct another inspection of the hacienda, owing to the time that had elapsed since the last one. On February 8, 1999, the Par3 Regional Labor Delegation advised that it had not conducted the inspection owing to lack of financial resources. On June 15, 1999, the Labor Public Prosecutor repeated his request.

387. In the case of the public civil action filed in 2000, the Court recalls that, in March 2000, Ant3nio Francisco da Silva and Gonçalo Luiz Furtado escaped from Hacienda Brasil Verde and went to the Federal Police in Marab3 (*supra* paras. 174 and 175). On March 15, 2000, the Par3 Regional Labor Delegation carried out a new inspection at Hacienda Brasil Verde with the presence of the Federal Police (*supra* para. 177). On May 30, 2000, based on the inspection report dated March 15, 2000, the Labor Public Prosecutor filed a public civil action against Jo3o Luiz Quagliato before the Araguaia Labor Judge (*supra* para. 179).

388. On July 20, 2000, a hearing was held on the charges filed by the Public Prosecution Service before the Conciliation and Prosecution Board of Araguaia. In May 2002, the Ministry of Labor conducted a further inspection to verify compliance with the commitments agreed between the Labor Public Prosecutor and several rural employers and, in the course of this inspection, a visit was made to Hacienda Brasil Verde. Following the inspection, the

Labor Public Prosecutor concluded that the employers were complying with their commitments and that, consequently, direct administration of the employees by the employer had eliminated the workers' financial and physical dependence on the *gatos*, which had been the cause of the exploitation of forced labor and conditions similar to those of slavery (*supra* paras. 181 and 184).

389. Finally, with regard to the criminal proceedings resulting from the March 2000 inspection, the Court notes that, during the public hearing, one of the expert witnesses and also the representatives referred to criminal proceedings opened into the facts documented on March 15, 2000, in Hacienda Brasil Verde. However, the State had made no mention of these proceedings, and the Court had no information about them up until that moment. The Court asked the State to present a complete copy of the said proceedings so that it would have all the available information in order to deliver judgment. In this regard, the State advised that, despite the actions taken, it had been unable to obtain a copy of proceedings No. 2001.39.01.000270-0, opened in 2001, before the Second Jurisdiction of the Marabá Federal Justice Department, state of Pará.

390. Nevertheless, public information available on the official website of the Federal Justice Department in the state of Pará reveals that these criminal proceedings were filed before the Marabá Federal Court on February 28, 2001, and subsequently transferred to the Xinguara State Court, state of Pará, on August 3, 2001. Nothing happened in these proceedings for 10 years, at least up until June 2, 2011, and there is no other information in this regard.⁴⁹⁵

i) *The effectiveness of the proceedings and the existence of an effective remedy*

391. The Court has indicated that Article 25(1) of the Convention establishes, in broad terms, the obligation of States to provide everyone subject to their jurisdiction with an effective judicial remedy against acts that violate their fundamental rights.⁴⁹⁶

392. In addition, the Court has established that, for the State to comply with the provisions of Article 25 of the Convention, the formal existence of the remedies is not sufficient, rather they must be effective; in other words, they must lead to results or solutions to the violations of rights recognized in either the Convention, the Constitution or the law. This means that the remedy must be appropriate to counteract the violation and that its implementation by the competent authority must be effective. Likewise, an effective remedy signifies that the analysis of a judicial remedy by the competent authority cannot be reduced to a mere formality; rather, that authority must examine the reasons cited by the plaintiff and issue an express opinion on them.⁴⁹⁷ Those remedies that are illusory, owing to the general situation of the country or even the particular circumstances of a specific case, cannot be considered effective.⁴⁹⁸ This may occur, for example, when their ineffectiveness has been revealed by the practice, because the means to execute the respective decisions are lacking, or due to any other situation that constitutes a context of

⁴⁹⁵ Website of the Pará Federal Justice Department: https://processual.trf1.jus.br/consultaProcessual/processo.php?proc=200139010002700&secao=MBA&pg=1&trf1_captcha_id=2dc48777b78e795a538b3aa440996f7b&trf1_captcha=f4gj&enviar=Pesquisar, consulted on October 10, 2016.

⁴⁹⁶ Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary objections*, para. 91, and *Case of Maldonado Ordoñez*, para. 108.

⁴⁹⁷ Cf. *Case of López Álvarez v. Honduras. Merits, reparations and costs*. Judgment of February 1, 2006. Series C No. 141, para. 96, and *Case of Maldonado Ordoñez*, para. 109.

⁴⁹⁸ Cf. *Case of Ivcher Bronstein v. Peru. Merits, reparations and costs*. Judgment of February 6, 2001. Series C No. 7, para. 137, and *Case of Maldonado Ordoñez*, para. 109.

denial of justice.⁴⁹⁹ Thus, the purpose of the proceedings should be to implement the protection of the right recognized in the legal ruling by the appropriate execution of this ruling.⁵⁰⁰

393. The Court has indicated that two specific State obligations can be identified under Article 25 of the Convention. The first is that the State must establish by law effective remedies that protect everyone subject to their jurisdiction from acts that violate their fundamental rights, or that determine their rights and obligations, and ensure due implementation of such remedies by the competent authorities. The second is that the State must guarantee the means to execute the respective decisions and final judgments of these competent authorities, so that they provide effective protection for the rights that have been declared or recognized.⁵⁰¹ The right established in Article 25 is closely related to the general obligation under Article 1(1) of the Convention, by attributing functions of protection to the domestic law of the States Parties.⁵⁰² Consequently, the State is responsible not only for creating an effective remedy and establishing it by law, but must also ensure the due implementation of this remedy by its judicial authorities.⁵⁰³

394. In this case, the Court considers, first, that the Brazilian State has a legal framework that, in principle, allows it to ensure that everyone has judicial protection by punishing the perpetration of wrongful acts and establishing reparation for harm cause to the victims when there is a possible violation of article 149 of the Brazilian Penal Code, which establishes reduction to a condition similar to that of a slave as a crime.

395. However, the Court recalls its case law that the mere existence of judicial remedies does not meet the State's obligation under the Convention; rather, the facts must demonstrate that these remedies are appropriate and effective and that they provide a prompt and exhaustive response in keeping with their purpose, which is to determine responsibilities and to make reparation to the victims when appropriate. The Court will now analyze whether the proceedings undertaken in this case were truly appropriate and effective mechanisms.

396. Regarding the 1997 criminal proceedings, the Court underlines that the charges were filed against the *gato* Raimundo Alves da Rocha, the manager of Hacienda Brasil Verde, Antônio Alves Vieira, and the owner of the hacienda, João Luiz Quagliato Neto. However, only Raimundo Alves and Antônio Alves was charged with committing the crime of reduction to a condition similar to that of a slave, while João Luiz Quagliato Neto was charged with committing a less serious offense.

397. Both the delay resulting from the lack of procedural action and the delay arising from the conflict of competences contravened due diligence in the criminal proceedings (*supra* para. 367). The Court notes that, following various actions with no procedural relevance, on May 28, 2002, it was declared that the criminal action filed against João Luiz Quagliato Neto had extinguished and, on July 10, 2008, it was declared that the penalty

⁴⁹⁹ Cf. *Case of Las Palmeras v. Colombia. Reparations and costs*. Judgment of November 26, 2002. Series C No. 96, para. 58, and *Case of Maldonado Ordoñez*, para. 109.

⁵⁰⁰ Cf. *Case of Baena Ricardo et al. v. Panama. Jurisdiction*. Judgment of November 28, 2003. Series C No. 104, para. 73, and *Case of Maldonado Ordoñez*, para. 109.

⁵⁰¹ Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits*, para. 237, and *Case of Maldonado Ordoñez*, para. 110.

⁵⁰² Cf. *Case of Castillo Páez v. Peru. Merits*. Judgment of November 3, 1997. Series C No. 34, para. 83, and *Case of Maldonado Ordoñez*, para. 110.

⁵⁰³ Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits*, para. 237, and *Case of Maldonado Ordoñez*, para. 110.

had prescribed with regard to the wrongful acts attributed to Raimundo Alves de Rocha and Antônio Alves Vieira, following a 10-year delay in processing the case.

398. The Court considers that the 1997 criminal action should have responded to the facts denounced with special diligence. To the contrary, the fact that it lasted so long based on factors that can be attributed to the judicial authorities, made it impossible to examine the case. The Court emphasizes that, in its declaration of prescription, the Public Prosecution Service indicated that “there [was] sufficient evidence of the authorship and practice of the crimes of reduction to a condition similar to that of a slave [...], violation of freedom of work [...], and illegal recruitment of workers from one part of national territory to another [...], by debt bondage.” However, despite being aware of these factors, the judicial authorities failed to ensure the necessary procedural impetus to determine the responsibilities in the case promptly and expeditiously, together with the measures to protect the victims and provide them with redress.

399. Rather, the judicial authorities considered that the proceedings had “been condemned to failure from the outset,” and that, based on the probative elements provided to the criminal proceedings, it had been useless to continue such proceedings, taking into account also “the lack of action by the State, procedural economy and criminal policy.”⁵⁰⁴

400. The 1997 criminal proceedings were initiated and ended without the merits of the matter having been examined, despite the extreme seriousness of the acts with which the accused were charged. In addition to the conflict of competences and other procedures, the proceedings did not analyze the facts of the case, and did not represent an effective mechanism to examine the perpetration of the crime of reduction to a condition similar to that of a slave established in article 149 of the Brazilian Penal Code at that time, or the responsibility of the accused, and reparation for the victims. The only measure that could be considered a reparation was that agreed with Mr. Quagliato Neto and consisted in the delivery of six baskets of basic commodities to a charity in São Paulo, in exchange for the suspension of the proceedings against him.

401. In addition, regarding the proceedings opened before the Labor Justice System, the Court notes that, on January 15, 1999, the court issued a recommendation to João Luiz Quagliato Neto, owner of Hacienda Brasil Verde, that he abstain from the practice of charging workers for their footwear, noting that, to the contrary, judicial action would be taken against him, and ordering that the case file be archived. Despite the egregious nature of the situations referred to in the 1997 inspection report, the Pará Regional Labor Delegation preferred “not to act, but rather to provide advice that the rulings [be] rectified.”

402. With regard to the public civil action filed against João Luiz Quagliato Neto in 2000, the Court underscores that this concluded with a conciliation under which Mr. Quagliato Neto undertook not to undertake or permit work under a “slavery regime” and to provide decent working conditions, and was warned that, to the contrary, he would be sanctioned with fines. Even though the justice system had significant information regarding the facts verified in the hacienda, it merely reached an agreement without considering in detail the gravity of the facts or the need to make reparation to the hacienda’s workers.

403. Lastly, regarding the criminal proceedings opened in 2001 before the Second Jurisdiction of the Marabá Federal Justice Department, in the state of Pará, the Court underlines that the State was unable to provide copies of the case file, so that it has no evidence to determine whether these criminal proceedings constituted an effective remedy

⁵⁰⁴ Judgment of July 10, 2008 (evidence file, folio 5622).

to examine the responsibilities for the facts of the case, and determine a punishment and reparation.

404. Based on all the above, the Court notes that none of the proceedings on which it received information determined any type of responsibility for the conducts denounced, and nor were they a means of obtaining reparation for the harm done to the victims, because none of the proceedings examined the merits of each issue.

405. The foregoing resulted in a denial of justice to the detriment of the victims, because it was not possible to ensure them judicial protection in this case, either substantively or legally. The State failed to guarantee the victims an effective remedy provided by the competent authorities that would protect their human rights against the acts that violated such rights.

406. In conclusion, despite the extreme gravity of the facts denounced, the proceedings that were conducted: (i) did not analyze the merits of the matter submitted; (ii) did not determine any responsibilities or adequately punish those responsible for the facts; (iii) did not provide a mechanism of reparation for the victims, and (iv) did not have the effect of preventing a continuation of the violation of the victims' rights.

407. In this regard, the Court points out that, given the presence of victims who were minors and the State's awareness of this situation, its responsibility to provide a simple and effective remedy to protect their rights was even greater. The Court has already indicated that cases in which the victims of human rights violations are children are particularly serious, because children are holders of the rights established in the American Convention, and are also ensured the special measures of protection established in its Article 19 which must be determined in keeping with the particular circumstances of each specific case.⁵⁰⁵

ii) *The prescription of the proceedings and its compatibility with the obligations derived from international law*

408. First, the Court recalls that it has determined that States have an obligation that is binding for all their powers and organs, whereby the latter are obliged to ensure *ex officio* that domestic laws are in accordance with the American Convention within their respective terms of reference and the corresponding procedural regulations.⁵⁰⁶

409. The Court has also determined that a State that has ratified an international treaty must incorporate into its domestic laws the changes required to ensure the implementation of the obligations it has assumed,⁵⁰⁷ and that this principle, which is reflected in Article 2 of the American Convention, establishes the general obligation of States Parties to adapt their domestic laws to the provisions of this instrument in order to guarantee the rights it contains,⁵⁰⁸ which means that measures under domestic law must be effective (*effet utile*).⁵⁰⁹

⁵⁰⁵ Cf. *Case of Fornerón and daughter v. Argentina. Merits, reparations and costs*. Judgment of April 27, 2012. Series C No. 242, para. 44, and *Case of the Campesina Community of Santa Bárbara*, para. 491 .

⁵⁰⁶ Cf. *Case of Almonacid Arellano et al. v. Chile. Preliminary objections, merits, reparations and costs*. Judgment of September 26, 2006. Series C No. 154, para. 124, and *Case of the Punta Piedra Garífuna Community and its members v. Honduras. Preliminary objections, merits, reparations and costs*. Judgment of October 8, 2015. Series C No. 304, para. 346.

⁵⁰⁷ Cf. *Case of Garrido and Baigorria. Reparations and costs*. Judgment of August 27, 1998. Series C No. 39, para. 68, and *Case of Maldonado Ordoñez*, para. 111.

⁵⁰⁸ Cf. *Case of Garrido and Baigorria. Reparations and costs*, para. 68 and *Case of Maldonado Ordoñez*, para. 111.

⁵⁰⁹ Cf. *Case of Ivcher Bronstein. Jurisdiction*. Judgment of September 24, 1999. Series C No. 54, para. 37, and *Case of Maldonado Ordoñez*, para. 111.

410. Similarly, this Court has understood that this adaptation involves the adoption of measures of two types: (i) to eliminate norms and practices of any nature that entail a violation of the guarantees established in the Convention or that do not recognize the rights established therein or that impede their exercise, which means that the norm or practice that violates the Convention must be modified, derogated or annulled, or amended, as appropriate,⁵¹⁰ and (ii) to enact laws and implement practices leading to the effective observance of the said guarantees.⁵¹¹

411. In this case, the Court underscores that the 1997 action against Raimundo Alves de Rocha and Antônio Alves Vieira concluded with the prescription of the punishment for the wrongful acts they were charged with: reduction to a condition similar to that of a slave (art. 149), violation of freedom of work (art. 197.1) and illegal recruitment of workers from one part of national territory to another (art. 207).

412. The Court has already indicated that, in criminal matters, prescription determines the extinguishment of the punishment owing to the passage of time and, in general, limits the State's punitive power to prosecute the wrongful act and to punish its authors. This is a guarantee that should be duly observed by the judge in the case of anyone accused of a crime. However, prescription of the criminal proceedings is inadmissible when international law stipulates this. In this case, slavery is considered a crime under international law and its prohibition is of a *jus cogens* nature (*supra* para. 249). The Court has also indicated that it is not admissible to cite procedural mechanisms such as prescription or the statute of limitations to avoid the obligation to investigation and punish such crimes.⁵¹² For the State to satisfy the obligation to adequately ensure different rights protected by the Convention, including the right of access to justice, it must comply with its duty to investigate, prosecute, punish, as appropriate, and make reparation for the facts. To achieve this objective, the State must observe due process and guarantee, among other matters, the principle of a reasonable time, effective remedies, and execution of the sentence.⁵¹³

413. The Court has already established that: (i) slavery and similar conditions constitute a crime under international law, and (ii) its prohibition by international law is a norm of *jus cogens* (*supra* para. 249). Therefore, the Court considers that the application of the statute of limitations to the crimes of subjection to slavery and similar conditions is incompatible with the Brazilian State's obligation to adapt its domestic law to international standards. In this case, the prescription constituted an obstacle to the investigation of the facts, the determination and punishment of those responsible and reparation to the victims, despite the nature of the facts denounced as a crime under international law.

iii) *Alleged discrimination in access to justice*

414. The Court recalls that the Commission indicated that, with regard to access to justice, this case provides examples of specific actions that point to a situation of structural discrimination, because not only were no criminal proceedings opened when workplace irregularities were found during the Hacienda Brasil Verde inspections, but also, when the labor proceedings were opened, a conciliation agreement was reached with the hacienda's

⁵¹⁰ Cf. *Case of Zambrano Vélez et al. v. Ecuador. Merits, reparations and costs*. Judgment of July 4, 2007. Series C No. 166, para. 56, and *Case of Maldonado Ordoñez*, para. 111.

⁵¹¹ Cf. *Case of Zambrano Vélez et al.*, para. 56, and *Case of Maldonado Ordoñez*, para. 111.

⁵¹² Cf. *Case of Barrios Altos v. Peru. Merits*. Judgment of March 14, 2001. Series C No. 75, para. 41; *Case of Almonacid Arellano*, para. 110.

⁵¹³ *Case of the La Rochela Massacre v. Colombia. Merits, reparations and costs*. Judgment of May 11, 2007. Series C No. 163, para. 193.

owner without taking the victims into account. Moreover, the representatives indicated that the lack of effective actions by the authorities in response to the complaints, and also the recurrence of the facts denounced reveal a situation of structural discrimination by the State that permitted the perpetuation of a situation involving the exploitation of a specific group of individuals.

415. In this regard, the Court has established in its case law that Article 1(1) of the Convention is a norm of a general nature, and its content extends to all the provisions of the treaty, because it establishes the obligation of the States Parties to respect and to ensure the free and full enjoyment of the rights and freedoms recognized therein "without any discrimination." In other words, whatsoever its origin or form any treatment that may be considered discriminatory in relation to the exercise of any of the rights recognized in the Convention is *per se* incompatible with this instrument. The State's failure to comply with the general obligation to respect and to ensure human rights, by any discriminatory treatment, gives rise to its international responsibility. Thus, an indissoluble connection exists between the obligation to respect and to ensure human rights and the principle of equality and non-discrimination.⁵¹⁴

416. The Court has also indicated that the principle of the equal and effective protection of the law and non-discrimination is a prominent element of the human rights protection system that is established in numerous international instrument and has been developed by legal doctrine and jurisprudence. At the current stage of evolution of international law, the fundamental principle of equality and non-discrimination has entered the domain of *jus cogens*. It underlies the legal framework of national and international public order and permeates the whole legal system.⁵¹⁵

417. In this case, the Court notes that there was a disproportionate impact on one segment of the population that shared characteristics relating to their condition of exclusion, poverty and lack of schooling. It was verified that the victims found in the 2000 inspection shared these characteristics and this placed them in a special situation of vulnerability (*supra* para. 41).

418. The Court notes that the analysis of the proceedings filed in relation to the facts that occurred in Hacienda Brasil Verde reveals that the authorities did not accord the facts that were denounced the extreme seriousness these facts signified and, as a result, they failed to act with the due diligence required to guarantee the victims' rights. The lack of action, as well as the leniency of the agreements and recommendations that were made, reflected a failure to condemn the facts that occurred in Hacienda Brasil Verde. The Court considers that the failure to act and to punish these facts may be explained by a normalization of the conditions to which individuals with certain characteristics from Brazil's poorest states were continually subjected

419. Thus, it is reasonable to conclude that the lack of due diligence and punishment for the act of subjecting someone to a condition similar to slavery was related to a preconception of the conditions to which it was normal that workers of the haciendas of the north and northeast of Brazil were subjected. This preconception was discriminatory in relation to the victims in the case and influenced the actions of the authorities, preventing proceedings to be conducted that would have punished those responsible.

iv) *Conclusion*

⁵¹⁴ *Juridical Status and Rights of Undocumented Migrants*, para. 85; and *Case of Duque*, para. 93.

⁵¹⁵ *Juridical Status and Rights of Undocumented Migrants*, para. 101; and *Case of Duque*, para. 91.

420. Based on the above, the Court concludes that the State violated the right to judicial protection established in Article 25 of the American Convention on Human Rights, in relation to Articles 1(1) and 2 of this instrument, to the detriment of: (a) the 43 Hacienda Brasil Verde workers rescued during the April 23, 1997, inspection and who have been identified by the Court in this judgment (*supra* para. 199), and (b) the 85 Hacienda Brasil Verde workers rescued during the March 15, 2000, inspection and who have been identified by the Court in this judgment (*supra* para. 206). In addition, the Court concludes that, with regard to Antônio Francisco da Silva, who was a minor during some of the facts of the case, the violation of Article 25 of the American Convention declared above is also related to Article 19 of this instrument.

B.4. The investigations into the alleged disappearance of Iron Canuto da Silva and Luis Ferreira da Cruz

421. The Court notes that, in this case, it has not been alleged that the State violated its obligation to respect the rights to personal liberty, personal integrity, life, recognition of juridical personality and the rights of the child of Iron Canuto da Silva and Luis Ferreira da Cruz. The dispute has been submitted only with regard to the alleged failure of the State to comply with its obligation to ensure these rights by an investigation. Therefore, the Court will now analyze the effectiveness of the investigations.

B.4.1 Arguments of the parties and of the Commission

422. The **Commission** argued that, in 1988, when the State authorities received the report of the disappearance of the adolescents, Iron Canuto da Silva, aged 17, and Luis Ferreira da Cruz, aged 16, they took two months before they visited Hacienda Brasil Verde, where they were informed that the adolescents had fled to another hacienda in the area. The authorities did not take any step to confirm this situation or to open an investigation in this regard. The Commission considered that the disappearance of the adolescents and their situation of vulnerability resulted in their exclusion from the State's institutional and legal system, prevented them from filing any type of legal action regarding the exercise of their rights, and has maintained them outside the real world and the legal sphere. The Commission also indicated that the disappearance of Iron Canuto da Silva and Luis Ferreira da Cruz was a clear example of structural discrimination because, despite the time that has passed since their disappearance, the State has failed to take any serious measure to investigate the facts and locate the young men. Consequently, 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 relation to Articles 8, 25 and 1(1) of this instrument.

423. The **representatives** argued that, owing to the complaint filed by the next of kin of Luis Ferreira da Cruz and Iron Canuto da Silva, the State was directly and promptly aware of their disappearance. However, ignoring the special measures of protection that should be observed with regard to minors, the State authorities did not act immediately; rather, it was only two months after the complaint that the Federal Police visited the site of the facts and proceeded to interview some people, who indicated that Luis Ferreira da Cruz and Iron Canuto da Silva had fled to another hacienda. The Federal Police did not verify this fact or open an investigation of any kind. The representatives also asserted that, although the State obtained information on the whereabouts and decease of Iron Canuto da Silva in 2007, this was not the case of Luis Ferreira da Cruz, who remained disappeared to this day. Therefore, the representatives concluded that 28 years after the report of the disappearance of the adolescent Luis Ferreira da Cruz, the State was internationally responsible for violating its obligation to ensure his rights to juridical personality, life, and

personal integrity and liberty owing to the failure to investigate the facts surrounding his disappearance. In addition, the representatives argued that the State's failure to carry out a serious and diligent search for Luis Ferreira da Cruz, the re-victimization by the State in the proceedings before the Inter-American Commission, the suffering and anguish caused by knowing the circumstances of his disappearance, as well as the fact that he was subjected to a contemporary form of slavery, also resulted in the violation of the right to personal integrity of his family members.

424. The **State** argued that Luis Ferreira da Cruz and Iron Canuto da Silva were not victims of forced disappearance or any other human rights violation at the time of their flight from Hacienda Brasil Verde. In this regard, the State provided as evidence the death certificate of Iron Canuto da Silva which showed that he died on July 22, 2007. The State also advised that, on August 4, 2015, Maria do Socorro Canuto and María Gorete, foster mother and sister of Luis Ferreira da Cruz, respectively, had informed the Federal Police by telephone, that Luis Ferreira da Cruz had died in a confrontation with the Military Police in the town of Xinguara approximately 10 years previously.

425. The State also indicated that, since he was not carrying identity documents at the time of his death, Luis Ferreira da Cruz had been given an indigent burial and, consequently, his name had not been recorded in the database of the Xinguara Civil Registry. Accordingly, the State argued that, following his flight from Hacienda Brasil Verde, Luis Ferreira da Cruz remained alive for more than 15 years without any indication or evidence that, during that time, he had been subjected to forced disappearance. In addition, the State indicated that the report of the presumed disappearance was made four months after the fact had supposedly occurred, which meant that the State could not have prevented the occurrence of the supposed incident. Consequently, the State concluded that it could not be found responsible for the alleged violation of the human rights established in Articles 3, 4, 5, and 7 of the American Convention, to the detriment of Luis Ferreira da Cruz, or of the presumed violation of Articles 8 and 25 of this instrument to the detriment of his family members.

B.4.2 Considerations of the Court

426. The Court has established that, while a forced disappearance subsists, States have the correlative duty to investigate it and, eventually, punish those responsible, pursuant to the obligations derived from the American Convention and, in particular, the Inter-American Convention on Forced Disappearance of Persons.⁵¹⁶ According to the arguments of the parties, this is the obligation that the State has presumably failed to comply with in this case.

427. Regarding the obligation of due diligence when a disappearance is reported, the Court has established that this obligation of means requires the State to take exhaustive measures to find the person concerned. In particular, the prompt and immediate actions of the police, prosecution and judicial authorities is essential, ordering the prompt and necessary measures aimed at determining the presumed victim's whereabouts. In addition, appropriate procedures should exist for filing reports and these should result in an effective investigation being conducted immediately. The Court has also established that the authorities should presume that the disappeared person remains alive until the uncertainty of his fate is brought to an end.⁵¹⁷

⁵¹⁶ Cf. *Case of Radilla Pacheco v. Mexico. Preliminary objections, merits, reparations and costs*. Judgment of November 23, 2009. Series C No. 209, para. 145, and *Case of the Campesina Community of Santa Bárbara*, para. 161.

⁵¹⁷ Cf. *Case of González et al. ("Cotton Field") v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 16, 2009. Series C No. 205, para. 283, and *Case of Velásquez Paiz et al.*, para. 122.

428. In this case, as background information, the Court noted that on December 21, 1988, the *Comissão Pastoral da Terra* and the Diocese of Araguaia, together with José Teodoro da Silva, father of Iron Canuto da Silva, aged 17, and Miguel Ferreira da Cruz, brother of Luis Ferreira da Cruz, aged 16, filed a report before the Federal Police based on the practice of slave labor in Hacienda Brasil Verde, and also the disappearance of the two adolescents. In this report, they alleged that, in August 1988, Iron Canuto da Silva and Luis Ferreira da Cruz had been taken by Manoel Pinto Ferreira, who was a *gato* known as "Mano," to work in Hacienda Brasil Verde for 60 days. They also indicated that, according to information they received from the *gato* "Mano," in around September of that year, the young men had tried to escape from the hacienda but had been found by the *gato* and forcibly returned. The *gato* had threatened to kill the adolescents and even fired some shots with his gun. Lastly, the complainants indicated that they were unaware of the whereabouts of the young men and that this situation had caused their families great concern (*supra* para. 130).

429. The Court has also verified that, on February 20, 1989, the Federal Police made a visit to Hacienda Brasil Verde. During this visit the workers present identified the *gato* known as "Mano" and informed the Federal Police that Iron Canuto da Silva and Luis Ferreira da Cruz had fled from Hacienda Brasil Verde in the direction of Hacienda Belém (*supra* paras. 134 and 135). Based on this information, the police did not continue the investigation into the disappearance of Iron Canuto da Silva and Luis Ferreira da Cruz because they considered that they were not disappeared. In this regard, the Court lacks competence to declare a violation of the American Convention because the facts occurred prior to the State's acceptance of its jurisdiction. Consequently, the Court is unable to rule on possible deficiencies in that investigation.

430. Also, in 2007, during the processing of the case before the Inter-American Commission, the State re-opened the investigation and discovered that Iron Canuto da Silva had been assassinated by an unknown person on July 22, 2007, in circumstances that were unrelated to the facts of this case. In this regard, Raimunda Márcia Azevedo da Silva stated before the Police Delegation of Floresta do Araguaia, Pará, that she had been living in marital union with Iron Canuto da Silva since 1994 and that they had four children who were minors (*supra* para. 187). In addition, his autopsy report was provided to these proceedings as evidence; the report indicated that Iron Canuto da Silva died as the result of injuries caused by gunshots (*supra* para. 187). Accordingly, the Court considers that the State re-opened the investigation into the disappearance of Iron Canuto da Silva in 2007 and verified that he had not been a victim of forced disappearance.

431. Meanwhile, with regard to Luis Ferreira da Cruz, the Court notes that, as a result of the re-opening 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 Secretariat for Justice and Human Rights of the state of Pará that there had been no information on his whereabouts following his flight from Hacienda Brasil Verde (*supra* para. 188). However, on August 4, 2015, Mrs. Canuto and María Gorete, foster sister of Luis Ferreira da Cruz, informed the Federal Police by telephone that Luis Ferreira da Cruz had died approximately 10 years before in a confrontation with the Military Police in the town of Xinguara. Additionally, María Gorete declared that, when they were informed of the death of Luis Ferreira da Cruz, he had already been given an indigent burial because he was not carrying any personal papers at the time of his death. In this regard, the Federal Police consulted the Xinguara Civil Register concerning the death certificate of Luis Ferreira da Cruz; however, they were advised that there was no record of his death so that it was probable that, if he had died, he had been given an indigent burial. In addition, in a statement made before the Federal Police on January 28, 2016, Maria do Socorro Canuto

indicated that she had found out about the death of Luis Ferreira da Cruz through his mother, who had received the news from an unknown person.

432. That said, the Court observes that, with regard to the presumed death of Luis Ferreira da Cruz, the evidence provided by the Commission and the parties is contradictory and very inconclusive. In 2009, the version of the foster family of Luis Ferreira da Cruz established that he was disappeared since his flight from Hacienda Brasil Verde in 1988. However, in 2015, Maria do Socorro Canuto and María Gorete stated that Luis Ferreira da Cruz had died 10 years previously – in other words, in around 2005. In addition, in a statement made in 2016, Maria do Socorro indicated that it was an unknown person who had provided this information. None of the statements made by Maria do Socorro Canuto indicate the approximate date on which news of the death of Luis Ferreira da Cruz was received. Even if this information were true and Luis Ferreira da Cruz is deceased, since he died without identification papers, it is probable that he was given an indigent burial, and it is an undisputed fact that his name does not appear in the records of those who are deceased.

433. Based on the above, which relates to facts regarding which it does not have competence, the Court notes that the State re-opened the investigation into the alleged disappearance of Luis Ferreira da Cruz in 2007; nevertheless, it failed to determine his whereabouts. Subsequently, in 2015, the State discovered, through the statements of his next of kin, that Luis Ferreira da Cruz had died in around 2005. Accordingly, from the evidence provided by the Commission and the parties, at the time this judgment is handed down, the Inter-American Court is unable to conclude that Luis Ferreira da Cruz was a victim of disappearance. Consequently, the State cannot be attributed with responsibility for the failure to investigate and eventually punish those allegedly responsible.

434. On this basis, the Court concludes that the State is not responsible for the alleged violations of the rights to juridical personality, life, and personal integrity and liberty recognized in Articles 3, 4, 5 and 7 of the American Convention on Human Rights, in relation to the rights of the child, established in Article 19 of this instrument, to the detriment of Iron Canuto da Silva and Luis Ferreira da Cruz, or for the violation of Articles 8 and 25 of this instrument to the detriment of their next of kin.

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

435. Based on the provisions of Article 63(1) of the American Convention,⁵¹⁸ the Court has indicated that any violation of an international obligation that has produced a harm entails the duty to make adequate reparation,⁵¹⁹ and that this provision reflects a customary rule that constitutes one of the fundamental principles of contemporary international law on State responsibility.⁵²⁰

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 consequences 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. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*. Judgment of July 21, 1989. Series C No. 7, para. 25, and *Case of Herrera Espinoza et al.*, para. 210.

⁵²⁰ Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*, para. 25, and *Case of Herrera Espinoza et al.*, para. 210.

436. Reparation of the harm caused by the violation of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists in the re-establishment of the previous situation. If this is not feasible, as in most cases of human rights violations, the Court will determine measures to ensure the violated rights and to redress the consequences of the violations.⁵²¹

437. This Court has established that reparations must have a causal nexus with the facts of the case, the violations that have been declared, the harm proved, and the measures requested to repair the respective harm. Consequently, the Court must observe the concurrence of these factors to rule appropriately and in accordance with the law.⁵²²

438. Based on the violations declared in the preceding chapter, the Court will proceed to analyze the claims submitted by the victims' representatives, together with the State's arguments, in light of the criteria established in the Court's case law regarding the nature and scope of the obligation to make reparation,⁵²³ in order to establish measures aimed at repairing the harm caused to the victims.

A. Injured party

439. This Court reiterates that, pursuant to Article 63(1) of the Convention, the injured parties are considered to be those who have been declared victims of the violation of any right recognized therein.⁵²⁴ Therefore, the Court will consider the following as "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. AntônioIVALDO 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 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

⁵²¹ Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*, para. 26, and *Case of Herrera Espinoza et al.*, para. 210.

⁵²² Cf. *Case of Ticona Estrada et al.*, para. 110, and *Case of Herrera Espinoza et al.*, para. 211.

⁵²³ Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*, paras. 25 to 27, and *Case of Flor Freire v. Ecuador. Preliminary objection, merits, reparations and costs*. Judgment of August 31, 2016. Series C No. 315, para. 215.

⁵²⁴ Cf. *Case of the La Rochela Massacre*, para. 233, and *Case of Herrera Espinoza et al.*, para. 212.

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 Pociônio 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 Moraes; 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. In their capacity as victims of the violations declared in Chapter VIII of this judgment, they will be considered beneficiaries of the following reparations ordered by the Court.

B. Investigative measures

440. The **Commission** asked that an investigation be conducted into the facts concerning the human rights violations relating to slave labor and that the investigation be conducted impartially and effectively and within a reasonable time in order to clarify the facts fully, identify those responsible and impose the corresponding sanctions.

441. Additionally, the Commission asked that the corresponding administrative, disciplinary and criminal measures be ordered with regard to the acts or omissions of the State officials which contributed to the denial of justice and the impunity of the facts of this case. It asked that special emphasis be placed on the following circumstances: (i) that administrative rather than criminal proceedings were opened to investigate the disappearances; (ii) that administrative and labor proceedings were opened to investigate slave labor, and (iii) that the only criminal investigation opened in relation to this offense had prescribed.

442. The **representatives** asked the Court to require the State to ensure that the facts are investigated by impartial, independent and competent bodies within a reasonable time. They argued that the State was obliged to remove all the obstacles that prevented the investigation of the facts and the prosecution and eventual conviction of those responsible for the grave human rights violations in this case.

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

444. The Court recalls that, in Chapter VII-1, it declared that the different investigations conducted by the State concerning the facts of this case had been inadequate and violated the victims' rights to judicial guarantees and judicial protection.

445. Consequently, the Court, as in cases it has heard previously⁵²⁵ and based on the nature of slavery as a crime under international law, and that the statute of limitations cannot be applied to the subjection of a person to a condition similar to slavery, establishes that the State should re-open, with due diligence, the required investigations and/or criminal proceedings for the facts verified in March 2000 in this case in order, within a reasonable time, to identify, prosecute and punish, as appropriate, those responsible. In particular, the State must: (a) ensure that the victims and their next of kin have full access and capacity to act at all stages of these investigations, pursuant to domestic law and the provisions of the American Convention; (b) given that slavery is a crime under international law and taking into consideration the characteristics of the facts and the context in which they occurred, the State must abstain from using mechanisms, such as amnesty or any other procedural obstacle, to exempt itself from this obligation; (c) guarantee that the investigations and proceedings with regard to the facts of this case are conducted, at all times, by the federal jurisdiction, and (d) publish the results of the proceedings so that Brazilian society may know the judicial determination of the facts that are the purpose of this case.⁵²⁶ In particular, the State should investigate and, if appropriate, re-establish (or reconstruct) criminal proceeding 2001.39.01.000270-0, initiated in 2001, before the Second Jurisdiction of the Marabá Federal Justice Department, state of Pará.

446. Also, as it has on other occasions,⁵²⁷ the Court establishes that, pursuant to the pertinent disciplinary rules, the State should examine the possible investigative and procedural irregularities related to this case and, if appropriate, sanction the conduct of the public servants concerned, without the need for the victims in this case to file the pertinent complaints.

C. Measures of satisfaction and guarantees of non-repetition

447. The Court will determine measures that seek to repair non-pecuniary damage, as well as measures of a public scope or repercussion.⁵²⁸ International case law and, in particular, that of this Court, has repeatedly established that the judgment constitutes *per se* a form of reparation.⁵²⁹

C.1. Measures of satisfaction: publication of the judgment

448. The **representatives** asked that the State publish the sections of the judgment that refer to the proven facts, the analysis of the violations of the American Convention, and the operative paragraphs. To this end, they indicated that the publications should be made in national newspapers as well as in the regional newspapers of Maranhão, Piauí, Mato Grosso and Tocantins, the states most affected by slave labor.

449. The **State** did not comment on this measure of reparation.

⁵²⁵ Among others, *Case of Quispialaya Vilcapoma*, para. 262, and *Case of Tenorio Roca et al.*, para. 268.

⁵²⁶ Cf. *Case of the Caracazo v. Venezuela. Reparations and costs*. Judgment of August 29, 2002. Series C No. 95, para. 118, and *Case of Tenorio Roca et al.*, para. 269.

⁵²⁷ Cf. *Case of Cabrera García and Montiel Flores v. Mexico*, para. 215, and *Case of Velásquez Paiz*, para. 230.

⁵²⁸ Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and costs*. Judgment of May 26, 2001. Series C No. 77, para. 84, and *Case of Herrera Espinoza et al.*, para. 220.

⁵²⁹ Cf. *Case of Neira Alegría et al. v. Peru. Reparations and costs*. Judgment of September 19, 1996. Series C No. 29, para. 56, and *Case of Herrera Espinoza et al.*, para. 220.

450. The Court finds, as it has in other cases,⁵³⁰ that the State must publish, within six months of notification of this judgment: (a) the official summary of this judgment prepared by the Court, once, in the Official Gazette; (b) the official summary of this judgment prepared by the Court, once, in a national newspaper with widespread circulation, and (c) this judgment in its entirety, available for one year on an official website.

451. The State must immediately inform the Court when it has made each of these publications, regardless of the one-year time frame for presenting its first report established in the tenth operative paragraph of the judgment.

C.2. Guarantee of non-repetition: imprescriptibility of the crime of slave labor

452. The **representatives** indicated that, since the case related to grave human rights violations, the prescription of the crime of slave labor was incompatible with the American Convention. Consequently, they asked that the State establish the imprescriptibility of this crime and, also, that it adopt all necessary measures to ensure that prescription is not an obstacle to the investigation and eventual punishment of those responsible for the facts of this case.

453. The **State** considered the request to declare the imprescriptibility of the crime of slave labor inadmissible for several reasons. First, it considered that the imprescriptibility of crimes against humanity referred only to the exercise of the international criminal jurisdiction and it was not the obligation of the States to establish this at the domestic level. Second, it argued that, in this specific case, it was not possible to speak of a crime against humanity because it did not relate to "a generalized and systematic attack on the civilian population" or to "a practice applied or tolerated by the Brazilian State." Lastly, the State indicated that article 149 of the Brazilian Penal Code was particularly broad and defined a series of conducts of different degrees of severity that could not be classified as crimes against humanity.

454. Regarding the imprescriptibility of the crime of slavery, in Chapter VIII-1, the Court concluded that the application of the statute of limitations in this case represented a violation of Article 2 of the American Convention, because it was a decisive element to maintain the impunity of the facts verified in 1997. In addition, the Court has verified the imprescriptible nature of the crime of slavery and similar conditions in international law, as a result of their nature as crimes under international law, whose prohibition has the status of *jus cogens* (*supra* para. 249). In addition, the Court recalls that, according to its consistent case law,⁵³¹ crimes that involve egregious human rights violations cannot be subject to prescription. Consequently, Brazil cannot apply a statute of limitations to this and other similar cases.

455. The Court considers that the alleged breadth of the definition of the crime established in article 149 of the Brazilian Penal Code does not change the preceding conclusion as claimed by the State (*supra* paras. 307 to 314). In this case, the Court is not declaring, in general, that a crime established in Brazilian law is imprescriptible (the said

⁵³⁰ Cf. *Case of Cantoral Benavides v. Peru. Reparations and costs*. Judgment of December 3, 2001. Series C No. 88, para. 79, and *Case of Herrera Espinoza et al.*, para. 227.

⁵³¹ See, *inter alia*, *Case of Barrios Altos v. Peru. Merits*, para. 41; *Case of Trujillo Oroza v. Bolivia. Reparations and costs*. Judgment of February 27, 2002. Series C No. 92, para. 106; *Case of Almonacid Arellano et al.*, para. 112, and *Case of Albán Cornejo et al. v. Ecuador. Merits, reparations and costs*. Judgment of November 22, 2007. Series C No. 171, para. 111.

article 149),⁵³² but merely the conducts that constitute slavery or a condition similar to slavery, as established in this judgment. Evidently, the Court's decision has the effect of declaring that slavery and similar conditions are imprescriptible, irrespective of whether they correspond to one or more crimes under Brazil's domestic laws. Consequently, the Court orders the State, within a reasonable time from notification of this judgment, to adopt the necessary legislative measures to ensure that the statute of limitations is not applied to the reduction of a person to slavery and similar conditions, as established in paragraphs 269 to 314 of this judgment.

C.3. Guarantee of non-repetition: definition of trafficking in persons

456. The **representatives** indicated that, in Brazil, trafficking in persons has only been defined as a crime if it is for the purposes of sexual exploitation. According to the Protocol of Palermo, the State should define the crime of trafficking in persons in accordance with international standards to include any type of trafficking for the purpose of economic exploitation.

457. The **State** argued that this request fell outside the jurisdiction of the Court *ratione materiae*. It indicated that the representatives could not ask the Court to declare possible failures by Brazil to comply with its obligation to criminalize trafficking in persons. It also asserted that slave labor and trafficking in persons were different concepts and this case refers only to the former.

458. The Court considers that the fact that trafficking is only defined as a crime for the purpose of sexual exploitation did not have an impact in this case. In the Court's opinion, the elements of trafficking in persons that occurred in the case are covered by article 207 of the Penal Code which establishes: "[To] recruit workers in order to take them to another part of national territory, by fraud [...]: Penalty – one to three years' imprisonment and a fine." This article was applied in the investigation opened following the 1997 inspection and was the purpose of the criminal proceedings instituted on that occasion. Thus, the possible defects in the definition of the crime of trafficking in persons had no consequences for the impunity of the human rights violations identified in Chapter VIII. Consequently, the Court finds that it is unable to grant the representatives' request that Brazil amend the definition of the crime of trafficking in persons in its domestic law.

C.4. Guarantee of non-repetition: pending draft laws and proportionality of the punishment

459. The **representatives** indicated that a draft law was being processed that intended to reduce the scope of the crime of slave labor by eliminating the mention of the "extenuating working day" and "degrading working conditions." Based on the principle of the irreversibility of the fundamental rights, the representatives requested that Brazil refrain from enacting legislative measures that signified a step backwards in the combat against slave labor. In addition, they indicated that the penalties established for the crime of slave labor (two to eight years' imprisonment) were too low and asked that the State establish new penalties that were more effective and more proportionate to the gravity of the conducts.

460. The **State** argued that the Court was unable to rule on the proportionality of the penalty assigned to the crime of slave labor in the abstract, and that the representatives had not indicated which inter-American parameters Brazil had violated. It also asserted that

⁵³² Thus, for example, the Court recalls that, in the case of *Almonacid Arellano*, it did not declare that murder was an imprescriptible crime in Chile in all circumstances.

the proportionality of the penalty can only be considered in relation to a specific case and that the range of two to eight years established by Brazil's law allows the different degrees of gravity of the conducts typified by the crime of slave labor to be dealt with differentially.

461. The Court notes that, in general, it does not have the powers to intervene in the domestic legislative affairs of the States. In addition, a ruling on a draft law, whatever its content, would be an action in abstract terms that had no relation to the specific violation of the rights guaranteed by the American Convention. Thus, the Court considers that it is unable to accept the representatives' request concerning the above-mentioned draft law.

462. Regarding the proportionality of the penalty for the crime of reducing someone to a condition similar to slavery, the Court considers that the penalties for a crime of this type should be proportionate to the gravity of the human rights violations involved. However, determination of the appropriate punishment for this crime is not a task for an international court. In this regard, the Court notes that a comparison of the laws of the States of the region does not provide clear criteria regarding the punishment that should be established in such cases. The States that have established a specific crime of slave labor do not agree substantively on the minimum and maximum duration of the punishment. Consequently, the Court finds that it is the State that has the authority to determine the minimum punishment for this conduct in its criminal law, and that it corresponds to the State's sphere of competence to define the severity of the punishment, because it is better situated to define this.

C.5. Guarantee of non-repetition: public policies

463. The **Commission** asked that the State adopt a series of public policies to prevent and punish slave labor. Among these, the most important are: (i) permanent implementation of public policies and legislative and other measures to eradicate slave labor; in particular, the State should monitor the use of slave labor and its punishment at all levels; (ii) reinforcement of the legal system and creation of coordination mechanisms between the criminal jurisdiction and the labor jurisdiction to overcome the defects that occur in the investigation, prosecution and punishment of those responsible for the crimes of servitude and forced labor; (iii) ensuring strict compliance with labor laws on the working day and the same pay as other salaried workers, and (iv) adoption of the necessary measures to eliminate any type of racial discrimination, particularly the organization of campaigns to raise the awareness of the general population and State officials, including agents of justice, with regard to discrimination and subjection to servitude and forced labor.

464. The **representatives** asked the Court to require the State to establish coordination policies between the public authorities to permit joint actions by the Public Prosecution Service, the Federal Police, the Ministry of Labor and other competent agencies. It indicated that the State should guarantee the rescue and rehabilitation of individuals subjected to slave labor, providing them with prompt information on their rights and on social programs they could benefit from. In particular, with the participation of CONATRAE, the State should establish a public policy to intermediate the hiring of rural labor to avoid rescued workers being re-hired for slave labor subsequently. They also requested the construction of a workers' health care center in the municipality of Barras, state of Piauí, the place where most of the victims in this case lived.

465. In addition, the representatives requested the continuation of certain public policies that had been successful in combating slave labor. In particular, they asked the Court to declare that the "Dirty List" and Interministerial Act 2/2015 were compatible with the American Convention.

466. The **State** indicated that, pursuant to the American Convention, it already had the obligation to conduct adequate and effective criminal investigations. It argued that compliance with that obligation fell within the State's margin of discretion. Thus, it was for the domestic authorities and not the Court to determine how the State complied with this obligation. It also argued that the State was the only entity with authority to elaborate public policies on the rescue and rehabilitation of workers. The State underlined that a pilot plan already existed for State intermediation in the case of rural workers. Lastly, it argued that the workers' health care center in Barras requested by the representatives bore no relationship to the facts of the case.

467. The State indicated that, currently, the "Dirty List" was suspended, pending a ruling of the Supreme Federal Court on its constitutionality. It added that, in its opinion, the "Dirty List" was compatible with the American Convention; nevertheless, it asked the Court not to impose a decision on the Brazilian Judiciary in relation to the pending constitutionality proceedings.

468. The Court considers that barriers still exist in the fight against forced labor in Brazil. For example:

- a) The Brazilian State has faced obstacles to the implementation of public policies on prevention, including communication difficulties and social inequality due to the vastness of its national territory, and the opposition of the sectors affected by the national policy to combat slave labor who diversify any actions that are contrary to this public policy;
- b) On December 23, 2014, the Supreme Federal Court suspended the list of those employers of slaves who had been identified (the "Dirty List"), owing to direct action on unconstitutionality No. 5,209, which had not been decided at the time this judgment was delivered, and
- c) It has been pointed out that the Executive has identified constraints such as the lack of trained personnel, the scarcity of labor monitors, the lack of public equipment and networks for State actions to respond to the demands; the decrease in the number of entities that make up the Special Mobile Monitoring Groups, and also in Federal Police agents, to act as logistic and judicial police, in the combat against slave labor.

469. However, the Court emphasizes that, since 1995, the Brazilian State has fulfilled its commitment to implement different actions to eradicate slave labor. Some of the most significant are as follow:

- a) In 1995, it issued Decree No. 1,538, creating the Interministerial Group for the Eradication of Forced Labor (GERTRAF), composed of various ministries and coordinated by the Ministry of Labor, with the participation of several agencies, institutions and the International Labour Organization (ILO). The Special Mobile Inspection Group was also established that year with authority to act in rural areas and investigate reports of slave labor, supporting the operations of the Interministerial Group for the Eradication of Forced Labor. The Mobile Group has been considered an efficient instrument to rescue workers from their situation of slave labor, impose administrative sanctions and the payment of compensation, and compile evidence of these facts to enable the Federal Public Prosecution Service and the Judiciary to act;
- b) Also, alongside the monitoring function, the State has increased actions on prevention and for the reinsertion of workers;

- c) In 2002, the Labor Public Prosecution Service was created to combat slave labor and also the National Coordinator for the Eradication of Slave Labor. In addition, that year the First National Plan for the Eradication of Slavery was introduced by the Special Committee of the Human Rights Council, and Law No. 10608/2002 was enacted on unemployment insurance for workers rescued from a forced labor regime or from a condition similar to slavery.
- d) On December 11, 2003, Law No. 10803/2003 was enacted amending the wording of article 149 of the Brazilian Penal Code;
- e) Under Ordinances No. 540 of October 15, 2004, and No. 2 of May 12, 2011, the Ministry of Labor and Employment set up the List of Offending Employers (the "Dirty List"), which was updated every six months, and contained the names of those accused of employing workers in conditions of slavery, and which could be consulted by financial institutions when credits were requested;
- f) On July 31, 2003, the National Commission for the Eradication of Slave Labor (CONATRAE), was established in substitution of the Interministerial Group for the Eradication of Forced Labor set up in 1995. The Commission incorporated a greater number of institutions of the Brazilian State and members of civil society in order to develop public policies to combat slave labor. The Court has taken note that ILO has identified this institution as a model that could serve as an example for countries with similar problems;
- g) In December 2007, in special appeal No. 398041, the Brazilian Supreme Federal Court established a final opinion that the federal jurisdiction was the competent instance of the Judiciary to try crimes relating to conditions similar to slavery established in article 149 of the Brazilian Penal Code;
- h) In 2008, the Second National Plan for the Eradication of Slavery was implemented. Also, in order to publicize public policies and raise the awareness of society in this area, the National Day of the Combat against Slave Labor was established by Law No. 12064/2009;
- i) On June 22, 2010, the Central Bank of Brazil issued resolution No. 3876 prohibiting the granting of rural credits to physical and legal persons registered on the Offending Employers List who kept workers in conditions similar to slavery;
- j) On June 5, 2014, constitutional amendment No. 81 was published; article 243 determined that urban and rural properties in any region of the country where slave labor, among other matters, was found would be expropriated;
- k) The Court has received information that the Brazilian State has reinforced the powers of the Labor Public Prosecutor and the Federal Public Prosecution Service to institute public civil and criminal proceedings so that the State can exercise its coercive authority. In addition, technical procedural guidelines have been drawn up for the Labor Public Prosecution Service when it participates in operations to eradicate slave labor;
- l) Both the labor jurisdiction and the federal jurisdiction have convicted individuals responsible for cases of reduction to a condition similar to that of slavery, also obliging them to pay sizeable fines;
- m) In addition, public policies have been implemented that have provided universal access to basic services, the civil registry, the "Bolsa Familia" program (a conditioned cash transfer program for education and vaccination), unemployment insurance, the national program on access to vocational training and employment, and the prestigious Program for the Eradication of Child Labor. The implementation of these social policies has contributed to the fact that Brazil was eliminated from

the Hunger Map of the Food and Agriculture Organization of the United Nations (FAO) in 2014, and

n) The case file includes information on technical cooperation mechanisms to expand and reinforce actions throughout the country by representatives of the National Justice Council, the ILO, the Labor Public Prosecution Service, the Federal Public Prosecution Service, the Ministry of Labor and Employment, the Superior Labor Court, the Human Rights Secretariat of the President of the Republic, and the National Union of Labor Monitors. Moreover, in 2010, the criminal prosecution of contemporary slavery was made a priority throughout the country by the Second Coordination and Review Chamber of the Federal Public Prosecution Service, and this resulted in the establishment of a database with information on: (i) inspection reports prepared since 1995 and their conclusions; (ii) police criminal investigations; (iii) criminal investigations by the Federal Public Prosecution Service; (iv) a review of powers; (v) the criminal actions filed and the sentences executed. The database also contains (vi) a summary of the inspections; (vii) the interviews with workers, traffickers (*gatos*) and managers; (viii) the logbooks noting down workers' debts, complaints, police investigations, and (ix) photographs.

470. Based on the above, the Court considers that the actions and policies adopted by the State are sufficient and does not find it necessary to order additional measures. In particular, the Court emphasizes the active participation of the Federal Public Prosecution Service in the inspections carried out by the Mobile Group to Combat Slave Labor. Nevertheless, the Court urges the State to continue increasing the effectiveness of its policies and the interaction between the different bodies working to combat slavery in Brazil, without allowing any retrogression in this area.

D. Other measures requested

471. The **Commission** asked that an investigation be conducted into the facts related to the disappearance of Iron Canuto da Silva and Luis Ferreira da Cruz. The investigation should be conducted impartially and effectively and within a reasonable time in order to clarify the facts fully, identify those responsible, and impose the corresponding sanctions.

472. The Commission also asked that a mechanism be established that facilitated locating the victims of slave labor and Iron Canuto da Silva, Luis Ferreira da Cruz, Adailton Martins dos Reis, and José Soriano da Costa, as well as the next of kin of the first two, José Teodoro da Silva and Miguel Ferreira da Cruz, in order to make reparation to them.

473. The **representatives** agreed with the Commission and the **State** did not refer to this request.

474. Given that, in Chapter VIII-2, the Court concluded that Brazil had not violated the American Convention in relation to the supposed disappearance of Iron Canuto da Silva and Luis Ferreira da Cruz, it is not possible to grant any measure of reparation of this type.

475. However, the **representatives** requested two specific measures as symbolic reparation for the victims. First, they asked that a plaque to commemorate the facts and the Court's judgment be placed in a public institution in Sapucaia and, second, they asked that the State organize a public ceremony to acknowledge its international responsibility and apologize to the victims. In both cases, it asked that the victims participate in these measures.

476. The **State** raised no objections to the symbolic reparation in general. However, it asked that both the commemorative plaque and the public ceremony be defined by the State without the need for the victims' consent. If the Court did not find this appropriate, the State asked that the Court itself define the content of these forms of symbolic reparation.

477. Regarding the said measures of reparation, the Court considers that the delivery of this judgment and the reparations ordered in this chapter are sufficient and adequate to rectify the violations suffered by the victims and does not find it necessary to order a public act to acknowledge responsibility or the installation of a commemorative plaque in Sapucaia.

E. Compensation

E.1. Pecuniary damage

478. The **Commission** asked that adequate reparation be made to the victims in this case, with regard to both pecuniary and non-pecuniary damage. In particular, it asked that the workers be paid the salaries owed for the services they had rendered, together with the sums of money that had been deducted illegally.

479. The **representatives** called for the payment of the labor rights that were not included in the "Work contract termination conditions" (TRCT) when the workers were rescued.

480. The **State** indicated that it was unable to respond for harm exclusively related to labor relations that should be compensated by the private individuals concerned. It added that the representatives had not provided any evidence to prove the amounts of the pecuniary damage in this case and that citing fairness could not substitute for this lack of evidence.

481. In its case law, the Court has developed the concept of pecuniary damage and has established that this supposes "the loss or detriment to the victims' earnings, the expenses incurred due to the facts, and the consequences of a pecuniary nature that have a causal nexus with the facts of the case."⁵³³

482. The Court will not grant any compensation for pecuniary damage in this case. The representatives have not provided any evidence related to their argument that the sums paid under the TRCT had been insufficient under Brazil's labor laws. The Court has no evidence to determine the correct way in which the TRCT compensation should have been calculated, either in general or with regard to each worker identified as a victim in this case. Accordingly, the Court is not in a situation to determine: (i) the amount that corresponded to each worker at the time he was rescued, and (ii) the possible difference with the amount received by each worker. These two elements are essential to establish the existence of a pecuniary damage. Consequently, the Court rejects the representatives' request in this regard.

E.2. Non-pecuniary damage

483. The **representatives** requested compensation for the harm suffered by all those identified as victims in their brief with motions, pleadings and evidence. As non-pecuniary

⁵³³ Cf. *Case of Bámaca Velásquez v. Guatemala. Reparations and costs*. Judgment of February 22, 2002. Series C No. 91, para. 43, and *Case of Flor Freire*, para. 251.

damage, they requested US\$40,000 for each worker found in Hacienda Brasil Verde during the inspections of April 1997 and March 2000. Also, regarding the victims found during the latter inspection, they requested compensation for the collective non-pecuniary damage calculated, in equity, for the establishment of a rural vocational training course in Barras, Piauí, to train rural workers.

484. In addition, in their final written observations, the representatives requested US\$40,000 for each worker rescued in the 1996 inspection as compensation for the non-pecuniary damage suffered. In the same brief, they also asked for compensation for non-pecuniary damage based on the forced disappearance of Luis Ferreira da Cruz.

485. The **State** argued, in general, that it did not have the obligation to provide compensation for non-pecuniary damage because the supposed human rights violations were committed by private individuals and not by the State. Thus, there was allegedly no causal nexus between the alleged harm and the State's conduct. It added that, in the case of violations of Articles 8 and 25 of the American Convention, the eventual judgment was, in itself, sufficient reparation.

486. In its case law, the Court has developed the concept of non-pecuniary damage and has established that this "may include both the suffering and anguish caused by the violation, and also the impairment of values that are of great significance for the individual, and any change of a non-pecuniary nature in the living conditions of the victims."⁵³⁴ Since it is not possible to assign a precise monetary equivalent to non-pecuniary damage, it can only be compensated, for the purposes of comprehensive reparation to the victim, by the payment of a sum of money or the delivery of goods or services with a monetary value, that the Court determines in application of sound judicial criteria and in terms of equity.⁵³⁵

487. In Chapters VIII-1 and VIII-2, the Court declared the international responsibility of the State for the violation of the 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 the rights established in Articles 8 and 25 of this instrument (*supra* paras. 368, 382 and 420), in relation to Articles 1(1) and 2 of the Convention. On the basis of the foregoing and on the different violations determined in this judgment with regard to different groups of workers based on facts and violations of a different nature, this Court establishes, in equity, the sum of US\$30,000.00 (thirty thousand United States dollars) for each of the 43 Hacienda Brasil Verde workers found during the April 23, 1997, inspection and who have been identified by the Court in this judgment (*supra* para. 199), and the sum of US\$40,000.00 (forty thousand United States dollars) for each of the 85 Hacienda Brasil Verde workers found during the March 15, 2000, inspection and who have been identified by the Court in this judgment (*supra* para. 206).

488. The Court considers that the amounts determined, in equity, for payment of non-pecuniary damage to each of the Hacienda Brasil Verde workers found during the 1997 and 2000 inspections compensate and form part of the comprehensive reparation for the victims, taking into account the suffering and anguish they endured in their situation of a condition similar to slavery. Additionally, although determination of the financial amount corresponds to the sphere of judicial discretion, in this case it is the closest to the sum requested by the representatives, Therefore, it is considered to be reasonable and proportionate to the sum requested.

⁵³⁴ Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and costs*, para. 84, and *Case of Herrera Espinoza et al.*, para. 241.

⁵³⁵ Cf. *Case of Cantoral Benavides v. Peru. Reparations and costs*. para. 53, and *Case of Chinchilla Sandoval*, para. 308.

489. Regarding the request for reparation for collective non-pecuniary damage, the Court considers that the compensation ordered in this judgment is sufficient and does not find it necessary to order additional reparations in this case.

F. Costs and expenses

490. The **representatives** requested payment of the expenses incurred during the processing of these proceedings from the time the petition was lodged before the Commission and up until the procedures conducted before the Court.

491. The representatives indicated that the costs and expenses of the *Comissão Pastoral da Terra* amounted to US\$139.66, while those of CEJIL amounted to US\$105,108,25. The representatives itemized this sum as follows: (i) US\$45,764.54 for traveling expenses; (ii) US\$1,678.76 for copies and mailing expenses; (iii) US\$2,770.29 for notarial expenses and translations; (iv) US\$122.24 for research related expenses; (v) US\$54,591.48 for salaries, and (vi) US\$180.95 for long-distance telephone calls.

492. The State asked that, if the Court did not declare its international responsibility, it should not be sentenced to pay any amount for costs and expenses. Specifically, it asked the Court to rule on the nature of costs and expenses.

493. Additionally, should it be sentenced to pay costs and expenses, the State indicated that this should be for reasonable amounts and that it had been duly authenticated that they were directly related to the specific case. In particular, Brazil considered that disbursements for the salaries of lawyers did not comply with these requirements, because they were mere estimates that were impossible to corroborate.

494. The Court reiterates that, in keeping with its case law, costs and expenses are part of the concept of reparation, because the actions taken by the victims to obtain justice, at both the national and the international level, entail disbursements that should be compensated when the international responsibility of the State is declared in a judgment convicting it. Regarding the reimbursement of expenses, it is for the Court to make a prudent assessment of their scope, which includes the expenses arising before the authorities of the domestic jurisdiction, and those generated during the proceedings before the inter-American system, taking into account the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. This assessment may be made based on the equity principle and taking into account the expenses indicated by the parties, provided that the amount is reasonable.⁵³⁶ As it has on other occasions, the Court recalls that it is not sufficient merely to submit evidentiary documents; rather the parties are required to include an explanation that relates the evidence to the fact that it is considered to represent and, in the case of alleged financial disbursements, the items and their justification must be established.⁵³⁷

495. From an analysis of the documentation provided, the Court concludes that some of the sums requested are justified and authenticated. Consequently, the Court determines, in equity, that the State should pay the sum of US\$5,000.00 (five thousand United States

⁵³⁶ Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and costs*. Judgment of August 27, 1998. Series C No. 39, para. 82, and *Case of Flor Freire*, para. 261 and 262.

⁵³⁷ Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of November 21, 2007. Series C No. 170, para. 275, and *Case of Herrera Espinoza et al.*, para. 248.

dollars) to the *Comissão Pastoral da Terra* , and US\$50,000.00 (fifty thousand United States dollars) to CEJIL.

G. Method of complying with the payments ordered

496. The State shall make the payment of the compensation for non-pecuniary damage and to reimburse the costs and expenses established in this judgment to the persons and organizations indicated herein, within one year from notification of this judgment, in the terms of the following paragraphs.

497. If any of the beneficiaries is deceased or dies before they receive the respective compensation, this shall be delivered directly to their heirs pursuant to the applicable domestic law.

498. The State shall comply with its pecuniary obligations by payment in United States dollars, or the equivalent in Brazilian currency, using the exchange rate in force on the New York Stock Exchange (United States of America), the day before payment to make the calculation.

499. If, for causes that can be attributed to any of the beneficiaries of the compensation or their heirs, it is not possible to pay all or part of the amounts established within the time frame indicated, the State shall deposit such amounts in an account or deposit certificate in their favor in a solvent Brazilian financial institution, in United States dollars, and in the most favorable financial conditions permitted by the State's banking law and practice. If the corresponding compensation is not claimed, after 10 years, the amount shall be returned to the State with the interest accrued.

500. The amounts allocated in this judgment as compensation for non-pecuniary damage and to reimburse costs and expenses shall be delivered to the persons and organizations indicated in full, as established in this judgment, without deductions resulting from possible taxes or charges.

501. If the State should fall in arrears, it shall pay interest on the amount owed corresponding to banking interest on arrears in the Federative Republic of Brazil.

**X
OPERATIVE PARAGRAPHS**

508. Therefore,

THE COURT

DECIDES,

Unanimously,

1. To reject the preliminary objections filed by the State with regard to the inadmissibility of the submission of the case to the Court owing to the publication of the Merits Report by the Commission; the lack of jurisdiction *ratione personae*, with regard to unidentified presumed victims, those who were identified but did not grant a power of attorney, those who did not appear in the Commission's Merits Report or who were not involved in the facts of the case; the lack of jurisdiction *ratione personae* for violations in abstract terms; the lack of jurisdiction *ratione materiae* based on violation of the principle of the subsidiary nature of the inter-American system (the fourth instance); the lack of

jurisdiction *ratione materiae* regarding presumed violations of the prohibition of trafficking in persons; the lack of jurisdiction *ratione materiae* concerning supposed violations of labor rights; the failure to exhaust domestic remedies, and the prescription of the petition before the Commission as regards the claims for reparation for pecuniary and non-pecuniary damage, in the terms of paragraphs 23 to 28, 44 to 50, 54, 71 to 74, 78 to 80, 84, 89 to 93, and 98 of this judgment.

2. To declare partially admissible the preliminary objection filed by the State regarding the lack of jurisdiction *ratione temporis* with regard to facts prior to the date on which the State accepted the Court's jurisdiction, and the lack of jurisdiction *ratione temporis* concerning facts prior to the State's adherence to the American Convention, in the terms of paragraphs 63 to 65 of this judgment.

DECLARES:

Unanimously that:

3. The State is responsible for the violation of the right not to be subjected to slavery and trafficking 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 this instrument, to the detriment of the 85 workers rescued on March 15, 2000, in Hacienda Brasil Verde, listed in paragraph 206 of this judgment, in the terms of paragraphs 342 and 343 of this judgment. Additionally, in relation to Antônio Francisco da Silva this violation occurred also in relation to Article 19 of the American Convention on Human Rights, since he was a minor at the time of the facts, in the terms of paragraphs 342 and 343 of this judgment.

By five votes to one, that:

4. The State is responsible for the violation of Article 6(1) of the American Convention, in relation to Article 1(1) of this instrument, which occurred in the context of a situation of historical structural discrimination, based on the economic status of the 85 workers identified in paragraph 206 of this judgment, in the terms of paragraphs 342 and 343 of this judgment.

Dissenting Judge Sierra Porto.

Unanimously that:

5. The State is responsible for violating the judicial guarantees of due diligence and reasonable time, established in Article 8(1) of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, to the detriment of the 43 Hacienda Brasil Verde workers found during the inspection of April 23, 1997, and who are identified by the Court in paragraph 199 of the judgment in the terms of paragraphs 361 to 382 of this judgment.

By five votes to one, that:

6. The State is responsible for violating the right to judicial protection, established in Article 25 of the American Convention on Human Rights, in relation to Articles 1(1) and 2 of this instrument to the detriment of: (a) the 43 Hacienda Brasil Verde workers found during the inspection of April 23, 1997, and who have been identified by the Court in this judgment (*supra* para. 199), and (b) the 85 Hacienda Brasil Verde workers found during the March 15, 2000, inspection and who have been identified by the Court in this judgment (*supra* para. 206). Additionally, in relation to Antônio Francisco da Silva this violation occurred also in

relation to Article 19 of the American Convention, all the foregoing in the terms of paragraphs 383 to 420 of this judgment.

Dissenting Judge Sierra Porto.

Unanimously that:

7. The State is not responsible for the violations of the rights to juridical personality, life, personal integrity and personal liberty, and judicial guarantees and protection, recognized in Articles 3, 4, 5, 7, 8 and 25 of the American Convention, in relation to Articles 1(1) and 19 of this instrument, to the detriment of Luis Ferreira da Cruz and Iron Canuto da Silva or of their family members, in the terms of paragraphs 421 and 426 to 434 of this judgment.

AND DECIDES:

Unanimously that:

8. This judgment constitutes, *per se*, a form of reparation.

9. The State must re-open, with due diligence, the relevant investigations and/or criminal proceedings for the facts verified in March 2000 in this case in order, within a reasonable time, to identify, prosecute and punish, as appropriate, those responsible as established in paragraphs 444 to 446 of this judgment. If appropriate, the State must re-establish (or reconstruct) criminal proceedings No. 2001.39.01.000270-0, opened in 2001, before the Second Jurisdiction of the Marabá Federal Justice Department, state of Pará, as established in paragraphs 444 to 446 of this judgment.

10. The State must make the publications indicated in paragraph 450 of the judgment within six months of notification of this judgment, as established herein.

11. The State must, within a reasonable time following notification of this judgment, adopt the necessary measures to ensure that the statute of limitations is not applied to the crime under international law of slavery and conditions similar to slavery, as established in paragraphs 454 and 455 of this judgment.

12. The State must pay the sums established in paragraph 487 of this judgment as compensation for non-pecuniary damage and to reimburse costs and expenses, in the terms of paragraph 495 of this judgment.

13. The State must provide the Court with a report on the measures taken to comply with this judgment within one year of its notification, without prejudice to the provisions established in paragraph 451 of this judgment.

14. The Court will monitor full compliance with this judgment, in exercise of its powers and in fulfillment of its obligations under the American Convention on Human Rights, and it will consider this case closed when the State has complied fully with all its provisions.

Judges Eduardo Ferrer Mac-Gregor Poisot and Eduardo Vio Grossi advised the Court of their concurring opinions. Judge Humberto Antônio Sierra Porto advised the Court of his partially dissenting opinion.

Done, at San José, Costa Rica, on October 20, 2016, in the Spanish and Portuguese languages, the Spanish text being authentic.

Judgment of the Inter-American Court of Human Rights. Case of the Hacienda Brasil Verde Workers v. Brazil. Preliminary objections, merits, reparations and costs.

Eduardo Ferrer Mac-Gregor Poisot
Acting 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
Acting President

Pablo Saavedra Alessandri
Secretary

SEPARATE OPINION OF JUDGE EDUARDO FERRER MAC-GREGOR POISOT

CASE OF THE HACIENDA BRASIL VERDE WORKERS V. BRAZIL

JUDGMENT OF OCTOBER 20, 2016

(Preliminary objections, merits, reparations and costs)

Judge Elizabeth Odio Benito adheres to this Opinion of Judge Eduardo Ferrer Mac-Gregor Poisot.

INTRODUCTION:

"HISTORICAL STRUCTURAL DISCRIMINATION" OWING TO THE ECONOMIC SITUATION (POVERTY) OF WORKERS SUBJECTED TO SLAVE LABOR

1. This is the first occasion on which the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") has had occasion to rule on the phenomenon of slave labor – which, in this case involved forced labor, debt bondage and trafficking in persons – declaring the State responsible for violating Article 6(1) of the American Convention on Human Rights (hereinafter "the American Convention" or "Pact of San José"), with regard to 85 workers – including only one woman – victims in this case, rescued from Hacienda Brasil Verde.

2. The Inter-American Court analyzed the context of discrimination based on poverty within the phenomenon of slave labor in Brazil (which dates from the mid-eighteenth century), and which systematically allowed the victims to be subjected to trafficking. That said, the Inter-American Court's recognition of "poverty" as part of the prohibition of discrimination on the basis of "economic status" is of particular relevance for inter-American jurisprudence – and, in general, for the Latin America context¹ – because it is the first time that poverty has been considered a component of the prohibition of discrimination based on "economic status" (a category that is expressly established in Article 1(1) of the American Convention, unlike other international treaties). Moreover, it is especially relevant that the violations declared occurred "in the context of a situation of *historical structural discrimination* owing to the economic status of the 85 workers" in this specific case.²

3. This is why I am issuing this separate opinion, because I consider it necessary to emphasize and examine in greater depth some elements of the case that relate to the recognition of poverty as part of the prohibition of discrimination based on economic status recognized in Article 1(1), and the identification of circumstances of *historical structural discrimination* in the judgment. In the interests of clarity, I will examine below: (I) Poverty as part of the prohibition of discrimination based on "economic status" under the human rights protection systems (*paras. 4-25*); (II)

¹ According to the Economic Commission for Latin America and the Caribbean (ECLAC): "The number of poor in the region increased by about 2 million between 2013 and 2014." According to ECLAC projections, the "poverty rate is expected to be 29.2% and the extreme poverty rate 12.4%, representing increases of 1.0 and 0.6 percentage points, respectively. If borne out, these projections mean a figure of 175 million income-poor in 2015, with 75 million indigent." Cf. UN, Economic Commission for Latin America and the Caribbean (ECLAC), *Social Panorama of Latin America, 2015*, (LC/G.2691-P), Santiago, 2016, p. 18.

² I/A Court HR. *Case of the Hacienda Brasil Verde Workers v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of October 20, 2016, Series C No. 318, paras. 341 to 343, and Operative Paragraph 4.

Poverty and economic status in inter-American jurisprudence (*paras. 26-44*); (III) Poverty as part of the “economic status” contemplated in the American Convention in this case (*paras. 45-55*); (IV) Structural violations in international law (*paras. 56-71*); (V) Indirect or *de facto* structural discrimination in the jurisprudence of the Inter-American Court (*paras. 72-80*); (VI) The scope of historical structural discrimination in the case of the Hacienda Brasil Verde Workers (*paras. 81-96*), and (VII) Conclusions (*paras. 97-100*).

I. POVERTY AS PART OF THE PROHIBITION OF DISCRIMINATION BASED ON “ECONOMIC STATUS” UNDER THE HUMAN RIGHTS PROTECTION SYSTEMS

4. Both the Inter-American Court of Human Rights and the European Court of Human Rights (hereinafter “the ECHR” or “the European Court”) agree that human rights treaties are living instruments the interpretation of which must evolve in keeping with the times and the general rules of interpretation established in Article 29 of the American Convention, as well as those established by the Vienna Convention on the Law of Treaties. This evolutive interpretation should be applied not only to the interpretation of the rights recognized in Articles 3 to 26 of the American Convention, but should also be taken into consideration to constitute special categories of protection in light of Article 1(1).³

5. Thus, when interpreting the Pact of San José, the most favorable alternative for the protection of the rights protected by this treaty should always be chosen, in accordance with the principle of the norm most favorable to the individual.⁴ In the course of its interpretive task, the Inter-American Court has indicated that the American Convention does not contain an explicit definition of the concept of “discrimination” or of the groups that are “subjected to discrimination.” Nevertheless, based on diverse references in the corresponding *corpus iuris*, the Inter-American Court has indicated that discrimination is related to:

“Any distinction, exclusion, restriction or preference for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms.”⁵

³ In this regard, the Inter-American Court has considered that: “This guidance is particularly relevant in the case of international human rights law, which has made great headway thanks to an evolutive interpretation of international instruments of protection. That evolutive interpretation is consistent with the general rules of treaty interpretation established in the 1969 Vienna Convention. Both this Court, in the Advisory Opinion on the Interpretation of the American Declaration of the Rights and Duties of Man (1989), and the European Court of Human Rights, in *Tyler v. The United Kingdom* (1978), *Marckx v. Belgium* (1979), *Loizidou v. Turkey* (1995), among others, have held that human rights treaties are living instruments whose interpretation must consider the changes over time and present-day conditions.” Cf. I/A Court HR. *The Right to Information on Consular Assistance within the Framework of the Guarantees of Due Process of Law*. Advisory Opinion OC-16/99 of October 1, 1999. Series A No. 16, para. 114.

⁴ Cf. I/A Court HR. *Case of Atala Riffo and daughters v. Chile. Merits, reparations and costs*. Judgment of February 24, 2012. Series C No. 239, para. 84; *Case of the “Mapiripán Massacre” v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 106; *Case of Ricardo Canese. Merits, reparations and costs*. Judgment of August 31, 2004. Series C No. 111, para. 181, and *Case of Herrera Ulloa. Preliminary objections, merits, reparations and costs*. Judgment of July 2, 2004. Series C No. 107, para. 184.

⁵ Cf. I/A Court HR. *Case of Gonzales Lluy et al. v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of September 1, 2015. Series C No. 298, para. 253; and *Case of Atala Riffo and daughters v. Chile. Merits, reparations and costs*. Judgment of February 24, 2012. Series C No. 239, para. 81. United Nations, Human Rights Committee of the International Covenant on Civil and Political Rights. United Nations, Human Rights Committee, General Comment No. 18, Non-discrimination, November 10, 1989, CCPR/C/37, para. 6. This Committee drew up that definition, in the universal sphere, based on definitions of discrimination in Article 1(1) of the International Convention on the Elimination of All Forms of

6. In this regard, international law and constitutional law have generally identified a specific list of groups towards whom discrimination, based on the said reasons, would have to be justified objectively and reasonably in order to consider that the right to equality had not been violated with regard to the enjoyment and guarantee of the human rights recognized in international treaties or the Constitutions. However, this list is not absolute or literal; therefore, in many cases – such as the one that concerns us – it will be necessary to delimit the content of these categories so that they can be applied in the specific case.

7. Thus, for example, “poverty” has not been expressly recognized as a category for special protection. Nevertheless, this does not mean that poverty cannot be assessed as part of one of the categories that are explicitly recognized, or incorporated into “any other social condition.” In this situation, the different systems for the protection of human rights (regional and universal), have their particularities as regards recognizing poverty as part of the category of “economic status” based on which discrimination is prohibited. This has not been an obstacle for the permeation of obligations with regard to the eradication of poverty, although not as part of a category meriting special protection, but as an aggravating factor relating to social living conditions, that can vary from case to case.

i) European human rights system

8. In the case of the European human rights system, Article 14 of the European Convention on Human Rights (hereinafter “the European Convention”) and Article 1 of Protocol 12 to that Convention establish the equal protection provisions (subordinate and autonomous, respectively). They establish:

“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, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”⁶

“ARTICLE 1 of the Protocol 12. General prohibition of discrimination: 1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”⁷

9. Regarding the scope of Article 14 of the European Convention (Prohibition of discrimination in light of the provisions of the Convention) and of Article 1 of Protocol No. 12 (Prohibition of discrimination in light of domestic law), the European Court has clarified that despite their “difference” in scope (provisions of the Convention and domestic law), the interpretation of the “prohibition of discrimination” is identical for both provisions. Thus, in Article 1 of Protocol No. 12, the European Court applies the same interpretation to the prohibition of discrimination that it has developed in Article 14 of the European Convention.⁸

10. Despite the foregoing, the European Convention does not expressly refer to discrimination based on economic status or poverty. But this has not been an obstacle

Racial Discrimination and Article 1(1) of the Convention on the Elimination of All Forms of Discrimination against Women.

⁶ European Convention on Human Rights, adopted in 1951, Art. 14.

⁷ Additional Protocol to the European Convention on Human Rights, of November 4, 2000, Art. 1.

⁸ Cf. ECHR. *Case of Zornic v. Bosnia and Herzegovina*, No. 3681/06, Judgment of July 15, 2014, para. 27.

for the European Court to develop case law on the economic conditions that many victims face.

11. In this regard, Article 14 of the European Convention has been associated implicitly, accessorially and indirectly with rights and freedoms protected by the European Convention. Thus, the prohibition of discrimination contemplated in the European Convention has been related to the right to life (Art. 2 of the European Convention) with regard to living conditions and assistance;⁹ the prohibition of cruel, inhuman or degrading treatment and respect for private and family life (Arts. 3 and 8 of the European Convention) with regard to decent living conditions,¹⁰ or the right to the protection of private and family life (Art. 8 of the European Convention) with regard to the deprivation of child custody rights and the placement of the children concerned in a state institution,¹¹ and the right to property (Art. 1 of Protocol No. 1 to the European Convention).¹²

12. Similarly, under the European system, a significant provision can be found in Article 30 of the European Social Charter, which recognizes *the right to protection against poverty and social exclusion*, and under which the States undertake "to take measures within the framework of an overall and co-ordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance."¹³

13. This provision of the European Social Charter has the explicit purpose of alleviating poverty and social exclusion by obliging States to take a coordinated approach to these matters. Thus, *poverty* is understood to encompass individuals who are in situations that range from their families living in extreme poverty for several generations to those who are temporarily exposed to the risk of suffering poverty. Meanwhile, the term *social exclusion* is understood to refer to the situation of those who are living in extreme poverty owing to an accumulation of disadvantages, who experience degrading conditions and actions or marginalization, whose rights to receive certain benefits (provided by the State) may have expired some time previously, or whose situation is the result of concurring circumstances.¹⁴

ii) African human rights system

14. Article 2 of the African Charter on Human and Peoples' Rights – or the Banjul Charter – establishes that "[e]very individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status." Thus, neither economic status or poverty are expressly mentioned as categories

⁹ Cf. ECHR. *Nencheva v. Bulgaria*, No. 48609/06 Judgment of June 18, 2013.

¹⁰ Cf. ECHR. *Moldovan and Others v. Romania*, No. 41138/98, Judgment of July 12, 2005 and *O'Rourke v. The United Kingdom*, No. 39022/97, Judgment of June 26, 2001.

¹¹ Cf. ECHR. *Case of Wallova and Wallov v. Czech Republic*, No 23848/04, Judgment of October 26, 2006.

¹² Cf. ECHR. *Öneryildiz v. Turkey*, No. 48939/99, Judgment of November 20, 2004.

¹³ *European Social Charter*, adopted on October 18, 1961, and revised in 1996, Art. 30.

¹⁴ Khaliq, Urfan and Churchill, Robín *The European Committee on Social Rights: putting flesh on the bare bones of the European Social Charter*, in Malcolm Langford (ed.) *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law* (New York: Cambridge University Press, 2006).

requiring special protection, which does not prevent them being incorporated under "or other status."

15. In the case of *Endorois v. Kenya*, the African Commission on Human and Peoples' Rights considered, in relation to the violation of Article 17(2) (participation in cultural life of the community) and 17(3) (protection of traditional values), that the State should take positive actions to eliminate the difficulties faced by the indigenous communities, including extreme poverty. Thus, it established that:

"248. [...] the Respondent State has a higher duty in terms of taking positive steps to protect groups and communities like the Endorois, but also to promote cultural rights including the creation of opportunities, policies, institutions, or 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. Although the Banjul Charter is one of the most progressive instruments as regards the incorporation of rights – by expressly recognizing the right to development in its Article 22 – the African system does not have significant jurisprudence on the conditions of poverty or economic status,¹⁶ due mainly to the context of the African continent.

iii) Universal human rights system

17. Under the universal human rights system, four instruments have defined what should be understood by the word "discrimination": (i) Convention 111 of the International Labour Organization concerning Discrimination in Respect of Employment and Occupation (1958);¹⁷ (ii) the UNESCO Convention against discrimination in education (1960);¹⁸ (iii) the International Convention on the Elimination of All Forms of Racial Discrimination (1965),¹⁹ and (iv) the International Convention on the Elimination

¹⁵ African Commission on Human and Peoples' Rights, Case of 276/03: Centre 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. 2. States shall have the duty, individually or collectively, to ensure the exercise of the right to development." The African human rights system has fewer problems when implementing the rights of an economic, social and cultural nature. As mentioned above, the 1981 African Charter on Human and Peoples' Rights includes both civil and political rights and rights of an economic, social and cultural nature. Ssenyonjo, Manisuli, Economic, "Social and Cultural Rights in the African Charter", in Ssenyonjo, Manisuli (edited), *The African Regional Human Rights System: 30 years after the African Charter on Human and Peoples' Rights*, Leiden-Boston, Martinus Nijhoff Publishers, 2012, p. 57. Similarly, see: Alemahu Yeshanew, Sisay, *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 Convention 111 indicates: "For the purpose of this Convention the term discrimination includes: (a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation, [and] (b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organisations, where such exist, and with other appropriate bodies."

¹⁸ Article 1(1) of the Convention establishes: "For the purposes of this Convention, the term 'discrimination' includes any distinction, exclusion, limitation or preference which, being based on race, colour, 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 stipulates: "In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or

of All Forms of Discrimination against Women (1979).²⁰ That is to say, these definitions recognize race, color, descent or national, ethnic or social origin, sex, religion, language, political or other opinion, or birth as express grounds for the prohibition of discrimination. Regarding "economic status," only the UNESCO Convention against Discrimination in Education recognizes this reason for discrimination.

18. In the case of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (1966), both covenants establish the prohibition of discrimination based on "property."²¹ The Committee on Economic, Social and Cultural Rights (hereinafter "the CESCR"), in its General Comment No. 20, 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 CESCR has also noted that "discrimination against some groups is pervasive and persistent and deeply entrenched in social behaviour and organization, often involving unchallenged or indirect discrimination. Such systemic discrimination can be understood as legal rules, policies, practices or predominant cultural attitudes in either the public or private sector which create relative disadvantages for some groups, and privileges for other groups."²³

20. In relation to economic status or property as a category requiring special protection, the CESCR has indicated that "property status, as a prohibited ground of discrimination, is a broad concept and includes real property [...] and personal property [...] or the lack of it"²⁴; in other words, one of the aspects of poverty. On this point, the CESCR has considered that "poverty may be defined as a human condition characterized by sustained or chronic deprivation of the resources, capabilities,

ethnic origin which has the purpose or effect of nullifying or impairing the recognition, 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 indicates that: "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 Article 2(1) of the International Covenant on Civil and Political Rights establishes that: "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, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

Article 2(2) of the International Covenant on Economic, Social and Cultural Rights establishes 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, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

²² Cf. 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. 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.

²⁴ Cf. 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.

choices, security and power necessary for the enjoyment of an adequate standard of living and other civil, cultural, economic, political and social rights.”²⁵

21. Meanwhile, the Guiding Principles on extreme poverty and human rights (hereinafter “the Guiding Principles”), define extreme poverty, as “the combination of income poverty, human development poverty and social exclusion”²⁶ where “a prolonged lack of basic security affects several aspects of people’s lives simultaneously, severely compromising their chances of exercising or regaining their rights in the foreseeable future.”²⁷

22. In addition, the Guiding Principles consider that:

“3. Poverty is an urgent human rights concern in itself. It is both a cause and a consequence of human rights violations and an enabling condition for other violations. Not only is extreme poverty characterized by multiple reinforcing violations of civil, political, economic, social and cultural rights, but persons living in poverty generally experience regular denials of their dignity and equality.

4. Persons living in poverty are confronted by the most severe obstacles – physical, economic, cultural and social – to accessing their rights and entitlements. Consequently, they experience many interrelated and mutually reinforcing 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 (underlining added).

23. The Special Rapporteur on extreme poverty and human rights has considered that “[p]eople living in poverty experience discrimination on the grounds of poverty itself, but also frequently due to membership in other disadvantaged sectors of the population, including but not limited to indigenous peoples, persons with disabilities, ethnic minorities and people living with HIV/AIDS.”²⁹ In other words although, in general, people living in poverty may, coincidentally, be members of other vulnerable sectors (women, children, persons with disabilities, indigenous peoples, Afro-descendants, the elderly, etc.) this does not exclude people living in poverty who do not fall within any other category.

24. This tendency has also been reflected by other United Nations Special Rapporteurs who differentiate between the traditionally recognized groups and people living in poverty, recognizing the latter as people who require special protection in relation to respect and guarantee of the internationally recognized human rights.

²⁵ UN, Economic and Social Council, Committee on Economic, Social and Cultural Rights, *Substantive issues arising in the implementation 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, The Guiding Principles on extreme poverty and human rights, adopted by the Human Rights Council on September 27, 2012, Resolution 21/11, Preface, para. 2.

²⁷ UN, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, *The realization of economic, social and cultural rights. Final report of the Special Rapporteur, Mr. Leandro Despouy*, June 28, 1996, E/CN.4/ Sub.2/1996/13, p. 58.

²⁸ UN, The Guiding Principles on Extreme Poverty and Human Rights, adopted by the Human Rights Council, September 27, 2012, Resolution 21/11, Preface, paras. 3 and 4.

²⁹ UN, Human Rights Council, Report of the Special Rapporteur on extreme poverty and human rights, March 11, 2013, A/HRC/23/36 para. 42.

25. Thus, we can find statements by the United Nations Special Rapporteurs on: (i) 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 human rights obligations related to the enjoyment of a risk-free, clean, healthy and sustainable 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 issue of poverty and economic status has been present throughout the jurisprudence of the Inter-American Court; many human rights violations are related to situations of exclusion and marginalization because the victims are living in poverty. To date, in all cases, poverty has been identified as a factor of vulnerability that intensifies the impact on the victims of human rights violations who are living in this situation.

27. When ordering reparations in the case of the *Juvenile Re-education Institute v. Paraguay* (2004), the Inter-American Court took into account that, in this case, there

³⁰ The Special Rapporteur on trafficking in persons, especially women and children has indicated that poverty is a significant vulnerability factor in the case of persons victims of 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 In the case of the independent expert on the right to water, she has asserted that "States must realize their human rights obligations related to sanitation in a non-discriminatory manner. They are obliged to pay special attention to groups particularly vulnerable to exclusion and discrimination in relation to sanitation, including people living in poverty [...]. Priority should be given to meeting the needs of these groups and, where necessary, positive measures should be adopted to redress existing discrimination and to ensure their access to sanitation. States are obliged to eliminate both *de jure* and *de facto* discrimination on [different] grounds." Cf. UN, Human Rights Council, Report of the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation, Catarina Albuquerque, July 1, 2009, A/HRC/12/24, para. 65.

³² The Special Rapporteur on the situation of human rights defenders has reported on the "extraordinary risks faced by those defending the rights of local communities, including indigenous peoples, minorities, and people living in poverty." UN, Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekkagya, August 5, 2013, A/68/262, para. 15.

³³ The Special Rapporteur on the right to education has stated that specific resources must be ensured to address the root causes of the exclusion from education of girls, those living in poverty or with disabilities, ethnic and linguistic minorities, migrants, and other marginalized and disadvantaged groups. UN, Report of the Special Rapporteur on the right to education, Kishore Singh, August 5, 2011, A/66/269, para. 47.

³⁴ The Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment has indicated that, "as the Human Rights Council has recognized, the worst effects of climate change are felt by those who are already vulnerable because of factors such as geography, poverty, gender, age, indigenous or minority status, national or social origin, birth or other status and disability." UN, Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, February 1, 2016, A/HRC/31/52, para. 27.

³⁵ The Special Rapporteur on adequate housing as a component of the right to an adequate standard of living has indicated that "inequality in access to land and property, affecting marginalized groups including women, migrants and all those living in poverty, has become embedded in housing inequality and spatial segregation, dividing cities between those who own land and property and have access to basic services and infrastructure and those who do not." UN, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Leilani Farha, August 2, 2015, A/70/270, para. 54

³⁶ The Special Rapporteur on the right to food has considered that, for example, "[a]gricultural workers are in a particularly vulnerable position, 60 per cent of them living in poverty in many countries." UN, Report of the Special Rapporteur on the right to food, Olivier De Schutter, September 8, 2008, A/HRC/9/23, para. 16.

were adolescents who were evidently in a situation of poverty and who had been victims of serious human rights violations.³⁷

28. In the case of the *Moiwana Community v. Suriname* (2005), the Inter-American Court found it proved that the members of this community had been forced to leave their traditional lands and their homes abruptly, and were in a situation of persistent displacement in French Guyana or in other parts of Suriname. The Court considered that community members had endured poverty and deprivations since their flight from the village of Moiwana because the possibility of using their traditional means of subsistence had been drastically limited.³⁸

29. In the case of *Servellón García v. Honduras* (2005), the Inter-American Court considered that States had the obligation to ensure the protection of children and adolescents affected by poverty who were socially marginalized. The Court also underlined, as it had in the case of the "*Street Children*" (*Villagrán Morales et al.*) *v. Guatemala*, that if States have evidence to believe that at-risk children are affected by factors that could lead them to commit wrongful acts, they should take all possible measures to prevent this. States should assume their special position of guarantor with greater care and responsibility and should take special measures to guarantee the principle of the best interests of the child.³⁹

30. In the case of the *Yakye Axa Indigenous Community v. Paraguay* (2005), Judge *ad hoc* Ramón Foguel, in his partially concurring and partially dissenting opinion, explained that "in the case of indigenous communities, especially those suffering from harsh poverty, the situation of extreme poverty entails a systematic denial of the possibility of enjoying the inherent rights of the human person." According to the Judge *ad hoc*, the Yakye Axa community was obviously affected by extreme poverty.⁴⁰ The Judge *ad hoc* also suggested that, on this point, the position of the Inter-American Court should be taken into account "regarding the need for interpretation of an international protection instrument to evolve with the changing times and current living conditions, [because] the Court has also pointed out that the evolutive interpretation, pursuant to the general rules of treaty interpretation, had significantly contributed to furthering international human rights law."⁴¹

31. In this regard, the Judge *ad hoc* indicated that, in his opinion, "the evolutive interpretation of the right to life embodied in the American Convention must take into account the *socio-economic situation* of Paraguay and of most Latin American countries, where extreme poverty had increased in absolute and relative terms despite implementation of social protection policies." According to Judge Foguel, "[i]nterpretation of the right to life involves not only compliance by the State with

³⁷ I/A Court HR. *Case of the "Juvenile Re-education Institute" v. Paraguay. Preliminary objections, merits, reparations and costs.* Judgment of September 2, 2004. Series C No. 112, para. 262.

³⁸ I/A Court HR. *Case of the Moiwana Community v. Suriname. Preliminary objections, merits, reparations and costs.* Judgment of June 15, 2005. Series C No. 124, para. 186.

³⁹ I/A Court HR. *Case of Servellón García et al. v. Honduras.* Judgment of September 21, 2006. Series C No. 152, para. 116.

⁴⁰ I/A Court HR. Opinion of Judge *Ad Hoc* Ramón Foguel Pedroso in the *Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, reparations and costs.* Judgment of June 17, 2005. Series C No. 125, para. 28.

⁴¹ I/A Court HR. Opinion of Judge *Ad Hoc* Ramón Foguel Pedroso in the *Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, reparations and costs.* Judgment of June 17, 2005. Series C No. 125, para. 32.

social protection measures that temporarily ensure minimum living conditions, but also addressing the causes that generate poverty, reproduce its conditions, and create additional poor populations." The Judge considered that this posed "the need to link measures for eradication of poverty with the series of phenomena that give rise to it, bearing in mind the impact of the decisions by the States, international and multilateral bodies," because "reproduction of conditions of poverty entailed the responsibilities of the international and national actors and institutions."⁴² He concluded by considering that:

"36. Progress of international human rights law requires that the international community acknowledge that poverty, and especially extreme poverty, is a form of abridgment of all human rights, civil, political, economic, and cultural, and that it act accordingly so as to facilitate identification of the internationally liable perpetrators. The economic growth system linked to a type of globalization that impoverishes growing sectors constitutes a "massive, flagrant, and systematic violation of human rights," in an increasingly interdependent world. This interpretation of the right to life, attuned to evolving times and current living conditions, must pay attention to the causes of extreme poverty and to their perpetrators. From this standpoint, the international responsibility of the State [...] and of other Signatory States of the American Convention does not cease, but it is shared with the International Community that requires new instruments."⁴³

32. In the case of the "*Mapiripán Massacre*" v. *Colombia* (2005), the Inter-American Court noted that, in view of the characteristics of this massacre, the harm suffered by the families, added to their fear of similar acts being repeated, the intimidation and threats by paramilitary agents to which some of them were subjected, and the fact that they had testified or would testify, had resulted in the internal displacement of many Mapiripán families. In addition, the Court considered that it was possible that some of the displaced families were not living in Mapiripán at the time of the massacre, but rather in surrounding areas, but were also obliged to displace as a result of the events. The Court noted that, as revealed by their testimony, many of those people had experienced a situation of harsh poverty and lack of access to many basic services.⁴⁴

33. In the case of the *Sawhoyamaxa Indigenous Community v. Paraguay* (2006), the Inter-American Court established that, under the American Convention, the international responsibility of the State arises at the time of the violation of the general obligations established in Articles 1(1) and 2 of this instrument. Special duties result from these general obligations that can be determined based on the particular needs for protection of the subject of law, due either to his personal condition or to the specific situation in which he finds himself, such as extreme poverty, marginalization or childhood.⁴⁵

34. In the case of *Ximenes Lopes v. Brazil* (2006), the Inter-American Court took into account that "groups of people who live in adverse conditions and have few resources, such as those who live in extreme poverty, at-risk children and adolescents,

⁴² I/A Court HR. Opinion of Judge *Ad Hoc* Ramón Foguel Pedroso in the *Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, reparations and costs*. Judgment of June 17, 2005. Series C No. 125, para. 33.

⁴³ I/A Court HR. Opinion of Judge *Ad Hoc* Ramón Foguel Pedroso in the *Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, reparations and costs*. Judgment of June 17, 2005. Series C No. 125, para. 36.

⁴⁴ *Cf.* I/A Court HR. *Case of the "Mapiripán Massacre" v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 180.

⁴⁵ I/A Court HR. *Case of the Sawhoyamaxa Indigenous Community v. Paraguay. Merits, reparations and costs*. Judgment of March 29, 2006. Series C No. 146, para. 154.

and indigenous peoples face an increased risk of suffering from mental disabilities.” The Court therefore considered that the link between the disability, on the one hand, and poverty and social exclusion, on the other, is direct and significant. Consequently, among the positive measures that States should take were those necessary to prevent all types of disability that may be prevented and to give people with any disability the preferential treatment required by their special condition of vulnerability.⁴⁶

35. In the case of the *Xákmok Kásek Indigenous Community v. Paraguay* (2010), the Inter-American Court indicated that the extreme poverty and lack of adequate medical care for pregnant or post-partum women were significant and resulted in high maternal mortality and morbidity. Accordingly, States should establish adequate health policies that allowed them to provide assistance using personnel who had received proper training in attending births; policies to prevent maternal mortality through appropriate prenatal and post-partum controls, and legal and administrative instruments relating to health policies that allowed cases of maternal mortality to be properly documented. This was necessary because pregnant women required special measures of protection.⁴⁷

36. In the case of *Rosendo Cantú et al. v. Mexico* (2010), the Inter-American Court indicated “that, according to Article 19 of the American Convention, the State must assume a special position as guarantor with greater care and responsibility, and must take special measures or steps aimed at guaranteeing the principle of the child’s best interest. In this regard, States must pay special attention to the needs and the rights of children in a special situation of vulnerability.” In that case, it considered that, based on its treaty-based obligations, the State should have adopted special measures in favor of Ms. Rosendo Cantú, not only when she filed the criminal complaint, but also during the time when, as a minor, she was involved in the prosecution’s investigation into the offense she had reported, especially as she was an indigenous person, because indigenous children whose communities are affected by poverty are in a situation of special vulnerability.⁴⁸

37. In the case of *Furlan and family v. Argentina* (2012), reiterating the relationship between poverty and disability,⁴⁹ the Inter-American Court observed that “the judge of the civil proceeding failed to notify the Juvenile Defender while Sebastián Furlan was a minor or later on, when the expert reports revealed the extent of his disability; therefore, Sebastián Furlan was not given the opportunity, which is mandatory at the domestic level, to participate in the civil proceeding, to which he could have contributed based on the powers granted by law. Bearing this in mind, in the specific circumstances of the case, the Defender of Juveniles and Persons with Disabilities would have constituted a mechanism to address Sebastián Furlan’s vulnerability, given the negative effects produced by the combination of his disability and his and his family’s very limited financial resources which, as mentioned previously, meant that his

⁴⁶ I/A Court HR. *Case of Ximenes Lopes v. Brazil. Merits, reparations and costs.* Judgment of July 4, 2006. Series C No. 149, para. 104.

⁴⁷ I/A Court HR. *Case of the Xákmok Kásek Indigenous Community v. Paraguay. Merits, reparations and costs.* Judgment of August 24, 2010. Series C No. 214, para. 233.

⁴⁸ I/A Court HR. *Case of Rosendo Cantú et al. v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of August 31, 2010. Series C No. 216, para. 201.

⁴⁹ I/A Court HR. *Case of Furlan and family v. Argentina. Preliminary objections, merits, reparations and costs.* Judgment of August 31, 2012. Series C No. 246, para. 201.

impoverished circumstances had a disproportionate impact on his condition as a person with disabilities.⁵⁰

38. In the case of *Uzcátegui et al. v. Venezuela* (2012), regarding the right to property, the Inter-American Court considered that, given the circumstances in which the action took place and, in particular, the socio-economic status and vulnerability of the Uzcátegui family, the damage to their property during the raid had a far greater impact than it would have had for other families. In this regard, the Court considered that States must take into account that groups of people living in adverse circumstances and with few resources, such as those living in poverty, experience an increase in the extent to which their rights are affected, precisely because of their more vulnerable situation.⁵¹

39. In the context of the internal armed conflict and the application of international humanitarian law, the Inter-American Court has considered that, owing to their socio-economic situation and vulnerability, people living in poverty experience the violation of human rights in a different way (and to a greater extent) than people or groups in other conditions.⁵² In the case of the *Santo Domingo Massacre v. Colombia* (2012), the Inter-American Court verified that, after the inhabitants of Santo Domingo had abandoned their homes and displaced as a result of the acts of violence they had experienced, some of the homes and shops in Santo Domingo were looted, and their property and possessions were damaged or destroyed.⁵³

40. In the case of *Artavia Murillo et al. (In vitro fertilization) v. Costa Rica* (2012), when analyzing the prohibition of *in vitro* fertilization, the Court indicated that this had had a disproportionate impact on the infertile couples who did not have the financial resources to undergo successful *in vitro* fertilization treatment abroad⁵⁴ and constituted indirect discrimination.⁵⁵

41. In the cases of the *Yean and Bosico Girls* (2005) and of *Expelled Dominicans and Haitians* (2014), both against the Dominican Republic, it was considered proved that many Haitians in Dominican Republic experienced poverty and marginalization based on their lack of legal status and opportunities.⁵⁶

⁵⁰ I/A Court HR. *Case of Furlan and family v. Argentina. Preliminary objections, merits, reparations and costs*. Judgment of August 31, 2012. Series C No. 246, para. 243.

⁵¹ I/A Court HR. *Case of Uzcátegui et al. v. Venezuela. Merits and Reparations*. Judgment of September 3, 2012. Series C No. 249, para. 204.

⁵² Cf. I/A Court HR. *Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, merits and reparations*. Judgment of November 30, 2012. Series C No. 259, para. 273.

⁵³ I/A Court HR. *Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, merits and reparations*. Judgment of November 30, 2012. Series C No. 259, para. 274.

⁵⁴ I/A Court HR. *Case of Artavia Murillo et al. ("In vitro fertilization") v. Costa Rica. Preliminary objections, merits, reparations and costs*. Judgment of November 28, 2012. Series C No. 257, para. 303.

⁵⁵ I/A Court HR. *Case of Artavia Murillo et al. ("In vitro fertilization") v. Costa Rica. Preliminary objections, merits, reparations and costs*. Judgment of November 28, 2012. Series C No. 257, para. 288 a 302.

⁵⁶ I/A Court HR. *Case of the Yean and Bosico Girls v. Dominican Republic*. Judgment of September 8, 2005. Series C No. 130, para. 139, and *Case of Expelled Dominicans and Haitians v. Dominican Republic. Preliminary objections, merits, reparations and costs*. Judgment of August 28, 2014. Series C No. 282, para. 158.

42. In the case of *Gonzales Lluy et al. v. Ecuador* (2015), concerning the victim's health, the Court noted that, among other measures to ensure the right to health, the Protocol of San Salvador established that States must adopt measures to ensure universal immunization against the principal infectious disease; the prevention and treatment of endemic, occupational and other diseases, and satisfaction of the health needs of the highest risk groups and of those whose poverty makes them the most vulnerable.⁵⁷

43. In that case, the Court considered that numerous factors of vulnerability and risk of discrimination intersected that were associated with the victim's condition as a minor, a female, a person living in poverty, and a person living with HIV. The Court also indicated that the poverty had an impact on the initial access to health care that was not of the best quality and that, to the contrary, resulted in the infection with HIV. The situation of poverty also had an impact on the difficulty to gain access to the education system and to lead a decent life. Subsequently, because she was a child with HIV, the obstacles that the victim suffered in access to education had a negative impact on her overall development, which was also a differentiated impact taking into account the role of education in overcoming gender stereotypes. In sum, in the Court's opinion, the victim's case illustrated that HIV-related stigmatization did not affect everyone in the same way and that the impact was more severe on members of vulnerable groups.⁵⁸ Based on the foregoing, the Court concluded that the victim suffered discrimination derived from her condition as a person living with HIV, a child, a female, and living in poverty.⁵⁹

44. As we can see, in inter-American case law, economic status (poverty or economic situation) has been examined in three different ways: first, poverty or economic status associated with traditionally identified vulnerable groups (children, women, indigenous peoples, people with disabilities, migrants, etc.); second, poverty or economic status analyzed as multiple/compounded⁶⁰ or intersected⁶¹ with other categories and, third, poverty or economic status analyzed in isolation in view of the circumstances of the case, without relating it to any other category of special protection.⁶² However, until the *Case of the Hacienda Brasil Verde Workers*, to which this separate opinion refers, this third factor has never been analyzed considering poverty as part of the economic status under the provisions of Article 1(1) of the American Convention.

III. POVERTY AS PART OF THE "ECONOMIC STATUS" ESTABLISHED IN THE AMERICAN CONVENTION IN THIS CASE

⁵⁷ I/A Court HR. *Case of Gonzales Lluy et al. v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of September 1, 2015. Series C No. 298, para. 193.

⁵⁸ I/A Court HR. *Case of Gonzales Lluy et al. v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of September 1, 2015. Series C No. 298, para. 290.

⁵⁹ I/A Court HR. *Case of Gonzales Lluy et al. v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of September 1, 2015. Series C No. 298, para. 291.

⁶⁰ See: I/A Court HR. *Case of Artavia Murillo et al. ("In vitro fertilization") v. Costa Rica. Preliminary objections, merits, reparations and costs*. Judgment of November 28, 2012. Series C No. 257.

⁶¹ See: I/A Court HR. *Case of Gonzales Lluy et al. v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of September 1, 2015. Series C No. 298.

⁶² See: I/A Court HR. *Case of Uzcátegui et al. v. Venezuela. Merits and Reparations*. Judgment of September 3, 2012. Series C No. 249.

45. Although the regional human rights courts have not ruled on discrimination based on economic status derived from the poverty experienced by persons subject to their jurisdictions – perhaps due to the fact that, unlike the American Convention, the European Convention and the African Charter do not expressly include the prohibition of discrimination based on “economic status” – as shown above, the Inter-American Court is in line with the universal system when it recognizes that people living in poverty are protected by Article 1(1) of the American Convention owing to their economic status. Thus, the Inter-American Court, adds another way of understanding poverty as part of a category meriting special protection.

46. In its judgment, the Inter-American Court recognized, for the first time, that the discriminatory acts in this case resulted from the economic status – the condition of poverty – of the 85 victims who were in Hacienda Brasil Verde. Thus, it established:

339. In this case, [...] some characteristics of specific victimization shared by the 85 workers rescued on March 15, 2000: **[(i)] they were poor; [(ii)] they came from the poorest regions of the country, [(iii)] with the lowest human development and possibilities of work and employment, and [(iv)] they were illiterate and [(v)] with little or no schooling.** This placed them in a situation that made them more susceptible to recruitment by means of false promises and deception. **This situation of imminent risk for a specific group of people with identical characteristics, from the same regions of the country, had historical roots and had been known since, at least, 1995** when the Brazilian Government expressly acknowledged the existence of “slave labor” in the country [...].

341. Having verified this situation, the Court finds that the State failed to take into account the vulnerability of the 85 workers rescued on March 15, 2000, **owing to discrimination based on their economic status.** This constitutes a violation of Article 6(1) of the American Convention, in relation to Article 1(1) of this instrument, to their detriment.⁶³ (emphasis added).

47. Thus, the specific criteria owing to which discrimination is prohibited under Article 1(1) of the American Convention do not constitute an exhaustive, literal or restrictive list, but are merely exemplificative.⁶⁴ Contrary to other cases in which the Inter-American Court has expanded the list of categories of special protection established in Article 1(1) of the Pact of San José,⁶⁵ incorporating, for example, gender identity and sexual orientation⁶⁶ or disability,⁶⁷ in this judgment, the Court delimits the

⁶³ I/A Court HR. *Case of the Hacienda Brasil Verde Workers v. Brazil. Preliminary objections, merits, reparations and costs.* Judgment of October 20, 2016, Series C No. 318, para. 341.

⁶⁴ For example, the Inter-American Court has indicated that, with the inclusion of the expression “any other social condition,” the wording of Article 1(1) leaves these criteria open to the incorporation of other categories that were not explicitly indicated. Thus, the Court should interpret the expression “any other social condition” in Article 1(1) of the Convention accordingly, from the perspective of the most favorable alternative for the person and for the evolution of the fundamental rights in contemporary international law. *Cf. Case of Atala Riffo and daughters v. Chile. Merits, reparations and costs.* Judgment of February 24, 2012. Series C No. 239, para. 85.

⁶⁵ Previously, the Court has expanded the list of special protection categories included in Article 1(1) of the American Convention which was adopted in 1969. Thus, in the 2003 *Advisory Opinion No. 18, on the Juridical Status and Rights of Undocumented Migrants*, in addition to “race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition,” it also considered “gender, age, patrimony and civil status” to be – implicit – special protection categories in light of Article 1(1) of the American Convention. *Cf. Juridical Status and Rights of Undocumented Migrants.* Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, para. 101.

⁶⁶ In the case of *Atala Riffo and daughters v. Chile*, based on the expression “any other social condition,” and bearing in mind the general obligations to respect and ensure rights established in Article 1(1) of the American Convention, the interpretation criteria established in Article 29 of this Convention, the provisions of the Vienna Convention on the Law of Treaties, the Resolutions of the OAS General Assembly, the standards established by the European Court and the United Nations treaty bodies, the Inter-American Court established that a person’s sexual orientation and gender identity were categories protected by the

meaning and scope of the prohibition of discrimination based on “economic status” by analyzing the situation of poverty of 85 of the victims in this case.

48. In this regard, the Special Rapporteur on extreme poverty and human rights has indicated 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. Penalization 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

And added:

“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. [... Moreover,] 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 poverty⁶⁹ (underlining added).

49. In this regard, the Inter-American Court – as the judgment reveals – has ruled that everyone in a situation of vulnerability merits special protection owing to the special obligations that the States must meet to satisfy the general obligation to respect and to ensure human rights. The Inter-American Court has recalled that it is not sufficient that States abstain from violating rights; rather, it is essential that they adopt positive measures, determined in function of the particular needs for protection of the subject of law, due to his personal situation or to the specific situation in which he finds himself,⁷⁰ *such as that of extreme poverty or marginalization.*⁷¹

Convention. I/A Court HR. *Case of Atala Riffo and daughters v. Chile. Merits, reparations and costs.* Judgment of February 24, 2012. Series C No. 239, para. 91.

⁶⁷ In the cases of *Ximenes Lopes v. Brazil*; *Furlan and family v. Argentina*, and *Artavia Murillo et al. (In vitro fertilization) v. Costa Rica*, without expressly mentioning the phrase “any other social condition,” the Court considered that persons with disabilities are people who, under the provisions of the Convention, warrant special protection based on their condition of vulnerability. I/A Court HR. *Case of Artavia Murillo et al. (“In vitro fertilization”) v. Costa Rica. Preliminary objections, merits, reparations and costs.* Judgment of November 28, 2012. Series C No. 257, paras. 292 and 285; *Case of Furlan and family v. Argentina. Preliminary objections, merits, reparations and costs.* Judgment of August 31, 2012. Series C No. 246, para. 134, and *Case of Ximenes Lopes v. Brazil.* Judgment of July 4, 2006. Series C No. 149, para. 103.

⁶⁸ UN, *Report of the Special Rapporteur on extreme poverty and human rights*, Magdalena Sepúlveda Carmona, August 4, 2011, A/66/265, para. 18.

⁶⁹ UN, *Report of the Special Rapporteur on extreme poverty and human rights*, Magdalena Sepúlveda Carmona, August 4, 2011, A/66/265, footnote 7.

⁷⁰ Cf. I/A Court HR. *Case of Artavia Murillo et al. (“In vitro fertilization”) v. Costa Rica. Preliminary objections, merits, reparations and costs.* Judgment of November 28, 2012. Series C No. 257, paras. 292 and 285; *Case of Furlan and family v. Argentina. Preliminary objections, merits, reparations and costs.* Judgment of August 31, 2012. Series C No. 246, para. 134; *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and reparations.* Judgment of June 27, 2012. Series C No. 245, para. 244; *Case of Ximenes Lopes v. Brazil.* Judgment of July 4, 2006. Series C No. 149, para. 103, and *Case of the “Mapiripán Massacre” v. Colombia.* Judgment of September 15, 2005. Series C No. 134, paras. 111 and 113.

⁷¹ Cf. I/A Court HR. *Case of the Sawhoyamaya Indigenous Community v. Paraguay. Merits, reparations and costs.* Judgment of March 29, 2006. Series C No. 146, para. 154. In this regard, the Court has also indicated that “States should take into consideration that the groups of persons who live in adverse conditions and have few resources, such as those who live in extreme poverty, at-risk children and adolescents, and indigenous peoples, are at a higher risk of suffering from mental disabilities [...]. The link between the disability, on the one hand, and poverty and social exclusion, on the other, is direct and significant. In view of the foregoing, among the positive measures to be adopted by the States are those required to prevent all

50. Thus, poverty forms part of the content of the prohibition to discriminate based on the economic status of a person or group of persons. In addition, poverty, since it is a multidimensional phenomenon,⁷² may be approached based on different grounds for protection in light of Article 1(1) of the American Convention, such as economic status, social origin or any other social condition,⁷³ and the protection of these categories of protection can be provided separately, or in a multiple or intersectional manner, according to the specific case.⁷⁴

51. Regarding the facts of the instant case, the Inter-American Court reached this conclusion because people who are living in poverty are more likely to suffer from trafficking,⁷⁵ as occurred in the case of the 85 Hacienda Brasil Verde workers. Regarding the link between work, poverty and contemporary forms of slavery, the Guiding Principles indicate that:

"83. In rural and urban areas alike, persons living in poverty experience unemployment, underemployment, unreliable casual labour, low wages and unsafe and degrading working conditions. Persons living in poverty tend to work outside the formal economy and without social security 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 labour, arbitrary dismissal and abuse"⁷⁶ (underlining added).

52. In this regard, the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, has indicated that:

types of disabilities that can be prevented, and to give people with mental disabilities the preferential treatment required by their condition." *Case of Ximenes Lopes v. Brazil*. Judgment of July 4, 2006. Series C No. 149, para. 104. In the *Case of Xákmok Kásek* the Court considered that "extreme poverty and the lack of adequate medical care for pregnant and post-partum women are causes of high maternal mortality and morbidity." *Case of the Xákmok Kásek Indigenous Community v. Paraguay. Merits, reparations and costs*. Judgment of August 24, 2010. Series C No. 214, para. 233.

⁷² Regarding "the multidimensionality of poverty" see: UN, *Report of the independent expert on the question of human rights and extreme poverty, Arjun Sengupta*, A/HRC/5/3, May 31, 2007, paras. 6 to 11.

⁷³ Similarly, the Committee on Economic, Social and Cultural Rights, in its General Comment No. 20, has indicated that the inclusion of "other status" indicates that this list is not exhaustive and other grounds may be incorporated [implicitly] in this category." It has also stated that "the nature of discrimination varies according to context and evolves over time. A flexible approach to the ground of "other status" is thus needed in order to capture other forms of differential treatment that: (i) cannot be reasonably and objectively justified and (ii) *are of a comparable nature* to the expressly recognized grounds [...]. These additional grounds are commonly recognized when they reflect the experience of social groups that are vulnerable and have suffered and continue to suffer marginalization. The CESCR also indicated that "other possible prohibited grounds could include or result from the intersection of two or more prohibited grounds of [explicit or implicit] discrimination." Cf. 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 Cf. UN, *Report of the independent expert on the question of human rights and extreme poverty, Arjun Sengupta*, A/HRC/5/3, May 31, 2007, para. 9.

⁷⁵ Cf. UN, *Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo*, August 6, 2014, A/69/269, paras. 12 and 17(f); UN, *Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo*, April 1, 2014, A/HRC/26/37, para. 41, and UN, *Mandate of the Special Rapporteur on trafficking in persons, especially women and children*, July 17, 2014 A/HRC/RES/26/8.

⁷⁶ UN, *The Guiding Principles on extreme poverty and human rights*, adopted by the Human Rights Council on September 27, 2012, Resolution 21/11, para. 83.

"48. Bonded labourers are mostly 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. In other words, if *generally, normally or almost always* the victims of slavery and conditions similar to slavery are poor people who have been discriminated against historically as a result of their race, sex and/or origin as indigenous people or migrants, this does not exclude the existence of people who are not necessarily included in these express categories, but who are also poor, marginalized or excluded. However, it should be stressed that when, in addition to the situation of poverty, another category established in Article 1(1) is present, such as race, gender, ethnic origin, etc., a situation of multiple/compounded or intersectional discrimination exists, based on the particularities of the case⁷⁹ and how this has been recognized by the Inter-American Court on other occasions.⁸⁰

54. For the purposes of the right to non-discrimination, economic status refers to structural situations that constitute the denial to a sector of the population, due to different circumstances, of the general requirements for a decent and autonomous life. Thus, it should be understood in the context of the types of situations that prevent a person from developing a decent life, such as access to and enjoyment of the most basic social services. In this regard, decent conditions refer to the possibility, for example, of having a job, or enjoying benefits such as housing, education, health, recreation, public services, social security and culture, because it is the individual's situation that constitutes his or her socio-economic status.⁸¹ The foregoing is more evident in Latin America with regard to women, owing to their lack of financial autonomy and because the incidence of poverty is higher among women, and this means that States need to take specific actions to resolve this situation of gender inequality in the impact of poverty.⁸²

55. In sum, the Inter-American Court has been expanding and delimiting the content of the grounds on which individuals or groups of individuals cannot be

⁷⁷ UN, *Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian*. 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, Gulnara Shahinian*. Thematic report on challenges and lessons in combating contemporary forms of slavery, July 1, 2013, A/HRC/24/43, para. 38.

⁷⁹ I/A Court HR. *Case of Gonzales Lluy et al. v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of September 1, 2015. Series C No. 298, para. 290.

⁸⁰ See: I/A Court HR. *Case of Artavia Murillo et al. ("In vitro fertilization") v. Costa Rica. Preliminary objections, merits, reparations and costs*. Judgment of November 28, 2012. Series C No. 257, and *Case of Gonzales Lluy et al. v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of September 1, 2015. Series C No. 298.

⁸¹ Maurino, Gustavo, "Pobreza y discriminación: la protección constitucional para los más humildes", in Alegre, Marcelo and Gargarella, Roberto (Coords.), *El derecho a la igualdad. Aportes para un constitucionalismo igualitario*, 2nd ed., Buenos Aires, Abeledo Perrot-Igualitaria-ACIJ, 2012, pp. 265-295 (on page 284).

⁸² Cf. UN, Economic Commission for Latin America and the Caribbean (ECLAC), *Social Panorama of Latin America, 2015*, (LC/G.2691-P), Santiago, 2016, pp. 20 and 21.

discriminated against. In some case, this has been in response to evolving social circumstances in which these grounds are not independent, but rather respond to different factors and social and cultural barriers as a whole, as in the case of HIV that may result in disability; infertility as a form of disability that has gender-based repercussions, or a worker's situation of disadvantage owing to his irregular migratory status and, now, the situation of poverty as part of the economic status.

IV. STRUCTURAL VIOLATIONS IN INTERNATIONAL LAW

56. The purpose of this section is to contextualize the progress made in the recognition of structural discrimination. In this regard, it is crucially important that States take the existence of such systemic situations of discrimination into account, because not all human rights violations occur as isolated events; rather, at times, they respond to specific institutional contexts of the denial of human rights.

57. Even though, the current state of constitutional and international human rights law has not firmly defined this concept, this has not prevented different instances from gradually ruling on the existence and materialization of the situation. Thus, we find some similar characteristics in the international sphere.

i) European Court of Human Rights

58. To date, the European Court has not recognized the concept of "*structural discrimination*" as grounds for special protection under Article 14 of the European Convention, or Article 1 of Protocol 12 to this Convention. However, as a result of a systematic context of denial of rights, this has not prevented structural violations of these rights established in the European Convention being protected. In this regard, it is worthwhile underlining that, unlike the American Convention, which includes a mandate to adopt domestic legislation or adapt existing laws (Article 2 of the Pact of San José), the European Convention does not include a provision of a similar breadth and dimension.

59. In this regard, the ECHR has considered it appropriate to deal with human rights violations in structural situations by the adoption of measures that help revert the situation that is unfavorable for a sector of the population. The absence of a treaty-based mandate in the European Convention has not prevented the Strasbourg Court from recognizing the existence of underlying structural and systemic problems in relation to other rights protected by the Rome Convention in its jurisprudence and, consequently, ordering the implementation of positive measures to ensure the rights protected in the European Convention.⁸³

60. European case law has recognized systemic and structural problems by means of the so-called pilot judgments.⁸⁴ Pilot judgments are rulings the European Court has adopted against the State concerned – owing to an accumulation of different cases with similar characteristics – obliging it to adopt domestic laws (general measures) that rectify the underlying *structural problem* that originated the violation of the

⁸³ Cf. ECHR *Broniowski v. Poland*, No. 31443/96, Judgment of June 22, 2004, paras. 190 and 191.

⁸⁴ As legal grounds, the European Court has used Article 46(1) according to which States undertake to abide by the final judgment of the Court in any case to which they are parties. Also, Article 1 which establishes the general obligation of the States to respect human rights and Article 19 which establishes that the function of the Court is to ensure that States observe the engagements undertaken under the Convention.

European Convention. In this type of case, the ECHR notes the existence of a systemic problem, suspends proceedings in identical cases – the domino effect – and requires the State to take general measures. The plaintiff (in the pilot case) and all those affected by the structural problem will have their proceedings postponed until the State concerned has adopted those measures.⁸⁵

61. The first case in which the ECHR used a pilot judgment was the 1994 case of *Broniowski v. Poland* concerning the right to property (violation of Article 1 of Protocol 1 to the European Convention). On that occasion, the European Court considered, when analyzing Article 46, that it was “inherent in the Court's findings that the violation of the applicant's right guaranteed by Article 1 of Protocol No. 1 originated in a widespread problem which resulted from a malfunctioning of Polish legislation and administrative practice and which has affected and remains capable of affecting a large number of persons.” In this case, the violation of property had not been prompted by an isolated incident, “but was rather the consequence of administrative and regulatory conduct on the part of the authorities towards an identifiable class of citizens, namely the Bug River claimants.” Thus, the ECHR considered that the existence and the systemic nature of the problem had already been recognized by the Polish judicial authorities as an “inadmissible systemic dysfunction,” as a consequence of which a whole class of individuals had been or still were denied the peaceful enjoyment of their possessions, to which should be added the deficiencies in national law and practice identified in the applicant's individual case.⁸⁶

62. Pilot judgments, as a mechanism for the recognition of structural and systemic problems within the States parties to the European Convention, were not limited to 2004, but have been repeated up until 2016,⁸⁷ in relation to issues such as: (i)

⁸⁵ Regarding the implications of a pilot judgment, the ECHR has considered that such judgments are based on the existence of a widespread, systemic problem as a consequence of which a whole class of persons has been adversely affected. Thus, the so-called general measures taken at the national level must take into account all those affected and remedy the systemic underlying the Court's finding of a violation. In this way, pilot judgments are a judicial approach used by the ECHR to remedy systemic and structural problems in domestic legal systems. Cf. ECHR, *Broniowski v. Poland*, No. 31443/96, Judgment (Friendly settlement), of September 28, 2005, paras. 34 and 35.

⁸⁶ Cf. ECHR *Broniowski v. Poland*, No. 31443/96, Judgment of June 22, 2004, para. 189.

⁸⁷ See, *inter alia*: 1. *Case of Broniowski v. Poland*, No. 31443/96, Judgment of June 22, 2004; 2. *Case of Hutten-Czapska v. Poland*, No. 35014/97, Judgment of June 19, 2006; 3. *Case of Sejdic v. Italy*, No. 56581/00, Judgment of November 10, 2004; 4. *Case of Burdov (No. 2) v. Russia*, No. 33509/04, Judgment of January 15, 2009; 5. *Case of Suljagic v. Bosnia and Herzegovina*, No. 27912/02, Judgment of November 3, 2009; 6. *Case of Olaru et al. v. Moldova*, No. 476/07, 22539/05, 17911/08 and 13136/07, Judgment of July 28, 2009; 7. *Case of Yurig Nikolayevich Ivanov v. Ukraine*, No. 40450/04, Judgment of October 15, 2009; 8. *Case of Rumpf v. Germany*, No. 46344/06, Judgment of September 2, 2010; 9. *Case of Athanasiou and Others v. Greece*, No. 50973/08, Judgment of December 21, 2010; 10. *Case of Greens and M.T. v. the United Kingdom*, No. 60041/08 and 60054/08, Judgment of November 23, 2010; 11. *Case of Maria Atanasiu and Others v. Romania*, No. 30767/05 and 33800/06, Judgment of October 12, 2010; 12. *Case of Vassilios Athanasiou v. Greece*, No. 50973/08, Judgment of December 21, 2010; 13. *Case of Dimitrov and Hamanov v. Bulgaria*, No. 48059/06, Judgment of May 10, 2011; 14. *Case of Finger v. Bulgaria*, No. 37346/05, Judgment of May 10, 2011; 15. *Case of Ümmühan Kaplan v. Turkey*, No. 24240/07, Judgment of March 20, 2012; 16. *Case of Michelioudakis v. Greece*, No. 40150/09, Judgment of April 3, 2012; 17. *Case of Glykantzi v. Greece*, No. 40150/09, Judgment of October 30, 2012; 18. *Case of Kurić and Others v. Slovenia*, No. 26828/06, Judgment of June 26, 2012; 19. *Case of Ananyev and Others v. Russia*, No. 42525/07 and 60800/08, Judgment of January 10, 2012; 20. *Case of Manushaqe Puto and Others v. Albania*, No. 604/07, 43628/07, 46684/07 and 34770/09; Judgment of July 31, 2012; 21. *Case of Torreggiani and Others v. Italy*, No. 43517/09, Judgment of January 8, 2013; 22. *Case of M.C. and Others v. Italy*, No. 5376/11, Judgment of September 3, 2013; 23. *Case of Gerasimov and Others 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, Judgment of July 1, 2014; 24. *Case of Ališić and Others v. Bosnia and Herzegovina, Croatia, “the former Yugoslav Republic of Macedonia”, Serbia and Slovenia*, No. 60642/08, Judgment of July 16, 2014; 25. *Case of Gazsó*

excessive time in domestic proceedings; (ii) the denial of prisoners' voting rights; (iii) the failure to regularize the residence status of persons wrongfully eliminated from the permanent residents registry; (iv) inhuman and degrading detention conditions; (v) unjustified delay in the execution of domestic court orders, and (vi) violations related to the right to property.

ii) Universal human rights system

63. The CESCR, in its General Comment No. 20 on non-discrimination in economic, social and cultural rights (2009), considered that:

"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 right. [...]"⁸⁸

64. Meanwhile, in 2010, in its General Recommendation No. 28 on the core obligations of States parties under article 2 of the Convention, the Committee for the Elimination of Violence against Women indicated that:

"16. States parties are under an obligation to respect, protect and fulfil 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, programme or practice appears to be neutral in so far 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

65. In the case of the Committee for the Elimination of Racial Discrimination, in General Recommendation No. 34 on racial discrimination against people of African descent, it understood that:

"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

v. Hungary, No. 48322/12, Judgment of July 16, 2015; 26. *Case of Neshkov and Others v. Bulgaria*, No. 36925/10, 21487/12, 72893/12, 73196/12, 77718/12 and 9717/13, Judgment of January 27, 2015; 27. *Case of Varga and Others v. Hungary*, No. 14097/12, 45135/12, 73712/12, 34001/13, 44055/13 and 64586/13, Judgment of March 10, 2015; and 28. *Case of W.D. v. Belgium*, No. 73548/13. Judgment of September 6, 2016.

⁸⁸ Cf. 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. 6.

⁸⁹ UN, Committee for the Elimination of Violence 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 Violence against Women, December 16, 2010, CEDAW/C/GC/28, para. 16. The Special Rapporteur on violence against women has expressed similar views on the structural discrimination suffered by women, indicating 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 macrolevel social, economic and political systems; institutional factors include formal and informal social networks and institutions; interpersonal factors include personal 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.

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 labour market; limited social recognition and valuation of their ethnic and cultural diversity; and a disproportionate presence in prison populations⁹⁰ (underlining added).

66. Finally, the most complete definition of systematic or structural discrimination is the one recently provided by the Committee on the Rights of Persons with Disabilities in its General Comment No. 3 on the rights of women and girls with disabilities. Thus, this Committee understood that systematic or structural discrimination existed when:

“17(e) Structural or systemic discrimination are hidden or overt patterns of discriminatory institutional behaviour, discriminatory cultural traditions, social norms and/or rules. Harmful gender and disability stereotyping can lead to such discrimination, inextricably linked to a lack of policies, regulation and service provision specifically for women with disabilities. [...]”⁹¹

67. Regarding the existence of structural poverty, the United Nations Special Rapporteur on the right to food, when analyzing the provision of conditional social assistance – for those who must meet certain eligibility requirements – considered that:

“30. Conditional programmes are generally designed to address “long-term, structural poverty rather than income shocks, particularly if those shocks are expected to be short-term ones”; they are not the ideal instrument for dealing with transient poverty.”⁹²

68. Although, to date, no explicit definition exists in international law of what should be understood by *structural poverty*⁹³ as a form of discrimination, Special Rapporteurs on extreme poverty have made statements that permit the identification of those persons who could be affected by this particular situation. For example, the Guiding Principles have indicated that “extreme poverty is created, enabled and perpetuated by acts and omissions of States and other economic actors. In the past, public policies have often failed to reach persons living in extreme poverty, resulting in the transmission of poverty across generations. Structural and systemic inequalities – social, political, economic and cultural – often remain unaddressed and further

⁹⁰ UN, Committee for the Elimination of Racial Discrimination, in General Recommendation No. 34 on Racial discrimination against people of African descent, October 3, 2011, CERD/C/GC/34, para. 6.

⁹¹ UN, Committee on the Rights of Persons with Disabilities in its 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 United Nations Special Rapporteur on the right to food, Oliver de Schutter, Crisis into opportunity: reinforcing multilateralism*, July 21, 2009, A/HRC/12/31, para. 30.

⁹³ In this regard, Roberto Saba has indicated that it should be emphasized that the condition of structural poverty often – although not necessarily – coincides with other particularities of the identity or the personality that are also characteristic of oppressed or subjugated groups, such as ethnicity or gender, and this, combined with structural poverty, reinforces the characteristic of the group as oppressed or subjugated. He has also indicated that the constitution and the subsequent identification of this group of persons is not a simple task. However, he proposed – by way of an example, but not a limitation – that there are three specific situations that could indicate the existence of an oppressed group characterized by sharing a situation of structural poverty: (i) the geographical concentration of a group of persons in places where only people who are equally poor live; (ii) the second, related to the first, is the difficulty or impossibility of accessing basic public services that are essential for developing a reasonably decent life project, such as safety, education and health, and (iii) the third is the intergenerational transmission and perpetuation of situations such as those revealed by the two previous factors; in other words, children who are unable to leave the community and who will suffer the same deprivations that will prevent them from escaping living conditions that were preordained since their birth. Cf. Saba, Roberto, *Pobreza, derechos humanos y desigualdad estructural*, Mexico, Supreme Court of Justice of the Nation-Electoral Tribunal of the Federal Judiciary-Electoral Institute of the Federal District, 2012, p. 46 and ff.

entrench poverty.”⁹⁴

69. Furthermore, “the right of people living in poverty to participate fully in society and in decision-making is blocked by multiple compounding obstacles – economic, social, structural, legal and systemic.”⁹⁵ And, “even where participatory mechanisms exist, people living in poverty face serious constraints in accessing or exerting influence through them, such as lack of information, low levels of education and illiteracy.”⁹⁶ In response to these situations of structural discrimination, “in many jurisdictions the effect of judgements is limited to those who litigate or bring a claim, even in cases that have a much wider significance. This means that only those individuals who have the capacity or tenacity to overcome all the barriers to accessing justice will benefit from important judgments.”

70. Often, however, those living in poverty are affected by widespread practices or broad Government measures that generate situations where the rights of many individuals are at stake. Therefore, “in legal systems where courts have the power of judicial review or of issuing *erga omnes* judgements, which can declare certain laws or a state of affairs unconstitutional, this can have a positive effect in terms of securing justice for persons living in poverty.”⁹⁷

71. Thus, those who suffer from structural poverty are, generally, people who historically transmit poverty across generations, whose possibilities of political participation are reduced and who are also denied basic services. Their access to justice will depend on them having the capacity to overcome the situation of poverty regardless of whether or not they also belong to groups that, historically, have been marginalized or excluded.

V. INDIRECT OR *DE FACTO* STRUCTURAL DISCRIMINATION IN THE JURISPRUDENCE OF THE INTER-AMERICAN COURT

72. The consistent case law of the Inter-American Court has mainly referred to and emphasized the direct discrimination suffered by certain groups of persons within society. However, at times, this has not prevented the Court from establishing that, in certain contexts, structural discrimination, *de facto* discrimination or indirect discrimination should be taken into consideration.

73. In this regard, in the chapter on reparations of the judgment in the 2009 case of *González et al. (“Cotton Field”) v. Mexico*, referring to structural discrimination, the Court indicated that:

“450 [...]. However, bearing in mind the context of structural discrimination in which the facts of this case occurred, which was acknowledged by the State, the reparations must be designed to change this situation, so that their effect is not only of restitution, but also of

⁹⁴ UN, The Guiding Principles on extreme poverty and human rights, adopted by the Human Rights Council on September 27, 2012, Resolution 21/11, para. 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 Cf. 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.

rectification. In this regard, re-establishment of the same structural context of violence and discrimination is not acceptable. [...]⁹⁸ (underlining added).

74. In the 2010 case of the *Xákmok Kásek Indigenous Community v. Paraguay*, referring to *de facto* discrimination, it considered that:

"273. In this case it has been 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 remedies that protect the rights of the indigenous peoples in practice and not just formally; [and] the limited presence of the State institutions that are obliged to provide supplies and services to the members of the Community, particularly food, water, health care and education [...],

274. [...] reveals *de facto* discrimination against the members of the Xákmok Kásek Community, which has been marginalized in the enjoyment of the rights that the Court has declared violated in this judgment. In addition, it is evident that the State has not taken the necessary positive measures to reverse that exclusion⁹⁹ (underlining added).

75. In the 2012 case of *Atala Riffo and daughters v. Chile*, the Court indicated, with regard to structural discrimination, that:

"92. With regard to the State's argument that, on the date on which the Supreme Court issued its ruling there was a lack of consensus regarding sexual orientation as a prohibited category for discrimination, the Court points out that the alleged lack of consensus in some countries regarding full respect for the rights of sexual minorities cannot be considered a valid argument to deny or restrict their human rights or to perpetuate and reproduce the historical and structural discrimination that these minorities have suffered" (underlining added).

76. Regarding reparations in this case, the Inter-American Court considered that:

"267. The Court emphasizes that some discriminatory acts analyzed in the previous chapters relate to the perpetuation of stereotypes that are associated with the structural and historical discrimination suffered by sexual minorities [...] particularly in matters concerning access to justice and the application of domestic law. Therefore, some reparations must have a transformative purpose, in order to produce both a restorative and corrective effect and promote structural changes, dismantling certain stereotypes and practices that perpetuate discrimination against LGBT groups¹⁰⁰ (underlining added).

77. Finally, in 2012, in the case of *Nadege Dorzema et al. v. Dominican Republic*, without ruling on structural discrimination, the Court included the following considerations on indirect and *de facto* discrimination:

"235. The Court considers 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 this case, the situation of special vulnerability of the Haitian migrants was due, *inter alia*, to: (i) the absence of preventive measures to adequately address situations relating to migratory control on the land border with Haiti and based on their situation of vulnerability; (ii) the violence deployed by the illegal and disproportionate use of force against unarmed migrants; (iii) the failure to investigate the said violence, the absence of testimony by and the participation of the victims in the criminal proceedings, and the impunity of the events; (iv) the detentions and collective expulsion without the due guarantees; (v) the lack of adequate

⁹⁸ I/A Court HR. *Case of González et al. ("Cotton Field") v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 16, 2009. Series C No. 205, para. 450.

⁹⁹ I/A Court HR. *Xákmok Kásek v. Paraguay. Merits, reparations and costs*. Judgment of August 24, 2010. Series C No. 214, . 273 and 274.

¹⁰⁰ I/A Court HR. *Case of Atala Riffo and daughters v. Chile. Merits, reparations and costs*. Judgment of February 24, 2012. Series C No. 239, paras. 92 and 267.

medical care and treatment of the injured victims, and (vi) the demeaning treatment of the corpses and the failure to return them to the next of kin.

238. All of the foregoing demonstrates that, in the instant case, there was *de facto* discrimination against the victims in the case owing to their condition as migrants, which resulted in preventing them from enjoying the rights that the Court has declared violated in this judgment. Therefore, the Court concludes that the State did not respect or ensure the rights of the Haitian migrants without discrimination in violation of Article 1(1) of the American Convention in relation to Articles 2, 4, 5, 7, 8, 22(9) and 25 thereof¹⁰¹ (underlining added).

78. In this way, the Inter-American Court has evaluated the impact of indirect discrimination in contexts of *de facto* discrimination.¹⁰² Thus, there is indirect discrimination (or the result) when the norms and practices appear to be neutral, but the result of their content or application has a disproportionate impact on individuals or groups of individuals in a situation of historical disadvantage, precisely on account of this disadvantage, without any objective or reasonable justification, which is revealed by the existence of structural and contextual factors that must be analyzed in each case.

79. In these four cases, the Inter-American Court recognized the existence of indirect or *de facto* structural factors that impact the enjoyment and exercise of some of the rights in the American Convention. In this regard, the principle of equality understood as a prohibition of discrimination is a limited concept for some situations resulting from indirect discrimination that are based on *de facto* circumstances. Accordingly, non-discrimination should be understood as a situation of disadvantage in which some groups find themselves, which can subject them to historical conditions of discrimination that, at times, are endorsed by society. The structural and contextual elements resulting from indirect or *de facto* discrimination allow determination of whether, in light of Article 1(1) of the American Convention, a specific group of individuals faces a situation of structural discrimination.

80. These are some but not all the elements that must be taken into consideration to determine whether, derived from the context or collective or massive patterns, we are faced with structural discrimination. In this regard, the cases mentioned have considered that this refers to: (i) a group or groups of individuals with characteristics that cannot be changed or modified by the will of the individual or that are related to historical discriminatory practices, and this group of individuals may be a minority or a majority; and to the fact: (ii) that these groups have found themselves in a systematic or historical situation of exclusion, marginalization or subordination that prevents access to the basic requirements for human development; (iii) that the situation of exclusion, marginalization or subordination is concentrated in a specific geographical area or may be present throughout the territory of a State and, in some cases, may be intergenerational, and (iv) that members of these groups, despite the law's intention, its neutrality or the express mention of some distinction or explicit restriction based on the provisions and interpretations of Article 1(1) of the American Convention, are

¹⁰¹ I/A Court HR. *Case of Nadege Dorzema et al. v. Dominican Republic. Merits, reparations and costs.* Judgment of October 24, 2012. Series C No. 251, paras. 235, 237 and 238.

¹⁰² I/A Court HR. *Case of Nadege Dorzema et al. v. Dominican Republic. Merits, reparations and costs.* Judgment of October 24, 2012. Series C No. 251, paras. 235, 237 and 238; *Case of Atala Riffo and daughters v. Chile. Merits, reparations and costs.* Judgment of February 24, 2012. Series C No. 239, paras. 92 and 267, and *Xákmok Kásek v. Paraguay. Merits, reparations and costs.* Judgment of August 24, 2010. Series C No. 214, paras. 273 and 274. Similarly: *Case of González et al. ("Cotton Field") v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of November 16, 2009. Series C No. 205, para. 450.

victims of indirect discrimination or *de facto* discrimination, owing to the State's actions or its application of measures or laws.

VI. THE SCOPE OF HISTORICAL STRUCTURAL DISCRIMINATION IN THE CASE OF THE HACIENDA BRASIL VERDE WORKERS

81. In this case, the Inter-American Court found it proved that the slave trade has been historically linked to forced labor in Brazil.¹⁰³ Even though slavery has been abolished (1888), poverty and the concentration of land ownership have been structural reasons for the persistence of slave labor in Brazil. Since they had no land of their own or stable employment, many workers in Brazil submitted to situations of exploitation accepting the risk of falling into situations of inhuman and degrading work. In 2010, the ILO considered that approximately 25,000 individuals were trapped in situations of forced labor in the territory of Brazil.¹⁰⁴ In addition, it has been proved that most victims of slave labor in Brazil are workers from parts of the states that are characterized by extreme poverty, with the highest levels of illiteracy and rural unemployment (such as Maranhão, Píauí, Tocantins). Workers from these states migrate to states with the greatest demand for slave labor: Pará, Mato Grosso and Tocantins.¹⁰⁵ The workers, mostly poor Afro-descendant or mulatto men, from 15 to 40 years of age, are recruited by "gatos" in their states of origin to work in distant states with the promise of attractive salaries.¹⁰⁶

82. Regarding the geographical location of the haciendas, the Inter-American Court considered that the very location was an element that restricted the liberty of the workers, because access to urban centers was often almost impossible owing, not only to the distance, but also to the poor condition of the surrounding roads. Likewise, owing to their extreme poverty, their desperation to work and their situation of vulnerability, they accepted precarious working conditions.¹⁰⁷ In relation to the investigation into these facts, according to the ILO, the roots of the situation of impunity for the use of slave labor lie in the links between landowners and the federal, state and municipal authorities in Brazil. Many landowners exercise power and influence within various national bodies, either directly or indirectly.¹⁰⁸ Hacienda Brasil Verde was located in the state of Pará.¹⁰⁹

83. In its judgment, the Court declared that the workers rescued from Hacienda Brasil Verde were in a situation of debt bondage and subjection to forced labor and that factors existed that made their vulnerability possible.¹¹⁰ The Court also considered

¹⁰³ Cf. I/A Court HR. *Case of the Hacienda Brasil Verde Workers v. Brazil. Preliminary objections, merits, reparations and costs.* Judgment of October 20, 2016, Series C No. 318, para. 110.

¹⁰⁴ I/A Court HR. *Case of the Hacienda Brasil Verde Workers v. Brazil. Preliminary objections, merits, reparations and costs.* Judgment of October 20, 2016, Series C No. 318, para. 111.

¹⁰⁵ I/A Court HR. *Case of the Hacienda Brasil Verde Workers v. Brazil. Preliminary objections, merits, reparations and costs.* Judgment of October 20, 2016, Series C No. 318, para. 112.

¹⁰⁶ I/A Court HR. *Case of the Hacienda Brasil Verde Workers v. Brazil. Preliminary objections, merits, reparations and costs.* Judgment of October 20, 2016, Series C No. 318, para. 113.

¹⁰⁷ Cf. I/A Court HR. *Case of the Hacienda Brasil Verde Workers v. Brazil. Preliminary objections, merits, reparations and costs.* Judgment of October 20, 2016, Series C No. 318, para. 114.

¹⁰⁸ I/A Court HR. *Case of the Hacienda Brasil Verde Workers v. Brazil. Preliminary objections, merits, reparations and costs.* Judgment of October 20, 2016, Series C No. 318, para. 115.

¹⁰⁹ I/A Court HR. *Case of the Hacienda Brasil Verde Workers v. Brazil. Preliminary objections, merits, reparations and costs.* Judgment of October 20, 2016, Series C No. 318, para. 128.

¹¹⁰ I/A Court HR. *Case of the Hacienda Brasil Verde Workers v. Brazil. Preliminary objections, merits, reparations and costs.* Judgment of October 20, 2016, Series C No. 318, para. 303.

that, in view of the facts of the case, the specific characteristics of the situation to which the 85 workers rescued in 2000 were subjected exceeded the limits of debt bondage and forced labor, and met the strictest criteria of the definition of slavery established by the Court.¹¹¹

84. The case of the *Hacienda Brasil Verde Workers v. Brazil* represents the first time that the Inter-American Court has recognized the existence of a situation of *historical structural discrimination* given the context in which the human rights violations of the 85 victims occurred. It also constitutes the first case in which the Court expressly finds a State internationally responsible for perpetuating this historical structural situation of exclusion. In this regard, the judgment indicates:

"343. On this basis, the Court considers that the State violated the right not to be subjected to slavery and 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 this instrument, to the detriment of the 85 workers rescued on March 15, 2000, in Hacienda Brasil Verde, and listed in paragraph 206 of this judgment. Additionally, with regard to Antônio Francisco da Silva, that violation also occurred in relation to Article 19 of the American Convention, since he was a minor at the time of the facts. Lastly, Brazil is responsible for the violation of Article 6(1) of the American Convention, in relation to Article 1(1) of this instrument, that occurred in the context of a situation of historical structural discrimination based on the economic status of the 85 workers identified in paragraph 206 of this judgment.

OPERATIVE PARAGRAPHS

4. The State is responsible for the violation of Article 6(1) of the American Convention, in relation to Article 1(1) of this instrument, which occurred in the context of a situation of historical structural discrimination, based on the economic status of the 85 workers identified in paragraph 206 of this judgment, in the terms of paragraphs 342 and 343 of this judgment¹¹² (underlining added).

85. Even though the problem of the existence of poverty and extreme poverty in the inter-American region concerns all the States that form part of the inter-American system, for the effects of the analysis of this case, it is important to stress the situation of poverty – which could be considered to fall within the definition of structural poverty – that was the original reason why the 85 workers were subjected to trafficking, and resulted in the victims being subjected to forced labor and debt bondage. Two essential aspects of this case, which were determinant to constitute discrimination based on economic status arising from poverty, were: (i) the concentration of the phenomenon of slave labor in a specific geographical area and its historical perpetuation, and (ii) the impossibility of the 85 victims obtaining the basic requirements for human development by their work.

86. It is important to clarify that, in many cases, it is probable that there is no direct intention to confine members of a group to the lowest rungs of the social structure, or to place them in situations of systematic disadvantage. It is probable that it is not even possible to identify clearly what the specific factors, decisions or practices were that contributed to achieving this result of systematic disadvantage. In this regard, the relevant point is to determine whether the prohibition of discrimination was violated, and whether a group of persons has been continually excluded from relevant and crucial elements for the autonomous development of the individual.

¹¹¹ I/A Court HR. *Case of the Hacienda Brasil Verde Workers v. Brazil. Preliminary objections, merits, reparations and costs.* Judgment of October 20, 2016, Series C No. 318, para. 304.

¹¹² I/A Court HR. *Case of the Hacienda Brasil Verde Workers v. Brazil. Preliminary objections, merits, reparations and costs.* Judgment of October 20, 2016, Series C No. 318, para. 343 and fourth operative paragraph

87. As a result of the context, the 85 victims in this case were subjected to trafficking, owing to the capture and recruitment of workers from the poorest regions of the country by fraud, deception and false promises, and the purpose of this recruitment was labor exploitation in Brazil.¹¹³

88. In this regard, the Inter-American Court concluded that the 85 Hacienda Brasil Verde workers had been victims of historical structural discrimination within the State of Brazil owing to the phenomenon of slavery.¹¹⁴ The Court reached this conclusion bearing in mind that this case referred to: (i) a group of individuals who required special protection because they were workers who had been trafficked using deception and, given their situation of poverty, this reached the threshold of slavery; (ii) these individuals were subjected to this historical and systematic practice that kept them in a situation of exclusion and marginalization; (iii) although this case was circumscribed to the state of Pará and Hacienda Brasil Verde, the thousands of victims who have not yet been liberated by the Brazilian authorities, especially in the southern part of the state of Pará, were also taken into consideration, and (iv) in this case, the phenomenon of slavery to which the 85 victims were subjected constituted indirect and *de facto* discrimination owing to the ineffectiveness of the State's practices to prevent and eradicate it.

89. The recognition of *historical structural discrimination* owing to slave labor is of vital importance, because it was not just any kind of individuals who were recruited by the *gatos*, but rather they were individuals with a specific profile, in which the poverty in which they lived was a crucial factor of vulnerability. In the judgment, the Inter-American Court considered that:

"339. [...] in this case some characteristics of specific victimization shared by the 85 workers rescued on March 15, 2000: **[(i)] they were poor; [(ii)] they came from the poorest regions of the country, [(iii)] with the lowest human development and possibilities of work and employment, and [(iv)] they were illiterate [(v)] with little or no schooling.** This placed them in a situation that made them more susceptible to recruitment by means of false promises and deception. **This situation of imminent risk for a specific group of people with identical characteristics, from the same regions of the country, had historical roots and was known since, at least, 1995** when the Brazilian Government expressly acknowledged the existence of "slave labor" in the country"¹¹⁵ (bold and underlining added)

90. In determining international responsibility based on structural discrimination:

¹¹³ I/A Court HR. *Case of the Hacienda Brasil Verde Workers v. Brazil. Preliminary objections, merits, reparations and costs.* Judgment of October 20, 2016, Series C No. 318, para. 305.

¹¹⁴ In addition, with regard to historical structural discrimination, it can be considered that: (i) in view of the elevated number of victims of slavery, trafficking and servitude that continue to be liberated by the Brazilian authorities, and to the change in perspective towards these phenomena and their occurrence "in the lower links of the supply chains of a globalized economy," it is important that the State adopt measures to discourage the demand that feeds labor exploitation, by both forced labor, and servitude and slavery; (ii) in this regard, in this specific case, the Court noted a series of shortcomings and negligence by the State as regards preventing the occurrence of servitude, trafficking and slavery in its territory prior to 2000, but also following the specific complaint filed by Antonio Francisco da Silva and Gonçalo Luiz Furtado, and (iii) starting in 1988, several complaints were filed concerning the existence of a situation similar to slavery in the state of Pará, specifically in Hacienda Brasil Verde. These complaints identified a *modus operandi* for the recruitment and exploitation of workers in that specific part of the south of the state of Pará. I/A Court HR. *Case of the Hacienda Brasil Verde Workers v. Brazil. Preliminary objections, merits, reparations and costs.* Judgment of October 20, 2016, Series C No. 318, paras. 318, 319, 326 and 327.

¹¹⁵ I/A Court HR. *Case of the Hacienda Brasil Verde Workers v. Brazil. Preliminary objections, merits, reparations and costs.* Judgment of October 20, 2016, Series C No. 318, para. 339.

"338. The Court finds that the State incurs international responsibility when, faced with the existence of structural discrimination, it fails to adopt specific measures with regard to the particular situation of victimization that reveals the vulnerability of a universe of individualized persons. It is the victimization of such persons that exposes their particular vulnerability, and this calls for specific protective actions that were omitted in the case of the individuals recruited to work in Hacienda Brasil Verde"¹¹⁶ (underlining added).

91. In other words, the very existence of structural discrimination is a situation that can be attributed to the State if it maintains large sectors or groups of the population in a situation of social exclusion. However, regarding this evident situation of structural discrimination – as exemplified by the facts recognized in this case – if, once a State becomes aware of the existence of this problem in its territory with regard to an identifiable group, it does not take sufficient and effective measures to counteract the specific situation, this results in a situation of greater vulnerability for the victims, especially due to the awareness of the imminent risk they face; a situation that the Inter-American Court is able to examine.

92. This does not exempt the State from its obligation to implement actions of a general nature in the domestic sphere. It is important to consider the individual and collective nature of the beneficiaries of certain State obligations to ensure that their rights are effective. Thus, norms that respond to an individual situation will be recognized as positive equalization measures, and those that compensate group inequality will be designated positive equalization actions.¹¹⁷ "

93. In this case, the Inter-American Court considered that, at the time of the facts, the actions taken to combat slave labor – because the existence of the problem of slave labor in Brazil was already known – and that had been implemented between 1995 and 2000, had been neither sufficient nor effective. Moreover, when regard to the particular affirming that the State had "fail[ed] to adopt specific measures with situation," the Inter-American Court did so in the sense that, regardless of the general actions implemented, when a specific segment of the group can be identified (for example, geographically), the State must implement additional measures to the general actions taken in order to reverse the situation that requires the priority attention of the State apparatus.

94. Notwithstanding the foregoing, this aspect is of fundamental importance and relevance, because structural discriminations have a component of historical continuity that perpetuates itself systematically in our societies and also because it has not been consolidated by legal doctrine and jurisprudence as a fundamental aspect of the discrimination suffered by some groups that have been excluded and marginalized.

95. Accordingly, by recognizing the existence of this type of historical discrimination, the Inter-American Court is emphasizing that the purpose of the prohibition of discrimination is to avoid the emergence of groups that are subjugated, excluded or marginalized as a result of social, economic or political policies or public measures. In addition, the historical structural discrimination suffered by the individuals in this case is not related to the unreasonableness or arbitrariness of a provision included in the law or the direct effects of a specific case.

¹¹⁶ I/A Court HR. *Case of the Hacienda Brasil Verde Workers v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of October 20, 2016, Series C No. 318, para. 338.

¹¹⁷ Cf. Giménez Glück, David, *El juicio de igualdad y Tribunal Constitucional*, Barcelona, Bosch, 2004, pp. 311-312 and ff.

96. To the contrary, the ineffectiveness, incapacity and deficient implementation of general actions to prevent discrimination within a State may produce and perpetuate, for years, the existence of discrimination towards certain disadvantaged groups, such as individuals subjected to slave labor; and, given their situation of poverty, they are particularly vulnerable in Brazil in light of Article 6(1) of the American Convention in relation to Article 1(1) of this instrument.¹¹⁸

VII. CONCLUSIONS

97. As this opinion has endeavored to show, unlike the European and African human rights systems, the inter-American and the universal systems reveal a tendency to consider that individuals who are in a situation of poverty constitute a group in a situation of vulnerability that differs from the groups traditionally identified as such; this situation is recognized as grounds for special protection and part of the prohibition of discrimination based on "economic status" expressly included in Article 1(1) of the American Convention.

98. In this case, the special vulnerability due to the situation of poverty of the 85 workers condemned them to be victims of trafficking owing to the *modus operandi* that existed in that region of the state of Pará and also, owing to other similar characteristics, made them susceptible to accepting the offers of work, made on false terms, in Hacienda Brasil Verde that took the form of slave labor. This particular situation did not occur in isolation but, as the judgment described, had a historical background and had persisted among specific sectors of the population and in determined geographical areas after 1995, the date on which Brazil expressly recognized the existence of "slave labor" in the country. It was on this basis, that the Court also analyzed the situation of poverty as the determinant structural factor for the historical perpetuation of slave labor in Brazil

99. As the judgment indicates, "[p]overty, therefore, is the main factor behind modern-day slavery in Brazil, since it increases the vulnerability of a significant portion of the population, making them easy prey for enticers of slave labor."¹¹⁹ Poverty, in the case *sub judice*, is not considered a condition, but rather a state of special vulnerability where the situation of exclusion and marginalization, added to the structural and systemic denial (with historical grounds in this specific case), had an impact on the 85 workers rescued from Hacienda Brasil Verde.

¹¹⁸ It should be emphasized that, in this case, the Inter-American Court did not determine measures of non-repetition as part of the reparations, considering that since 1995 the Brazilian State had greatly increased its efforts to avoid the perpetuation of the recruitment of poor individuals who are then subjected to slave labor, an action that the Court assessed positively. Despite this, and without downplaying the efforts that have been implemented to date, the Court *urged* the State to continue increasing the effectiveness of its policies and the interaction among the different bodies involved in combating slavery in Brazil, *without permitting any retrogression in this matter*. The mandate of non-retrogression signifies that, although the Court did not order additional actions and measures to those already implemented, since those were sufficient in the Inter-American Court's opinion, the guarantee of non-repetition is not exhausted merely with the existence of public actions, measures, laws and policies, but this whole range of mechanisms must be implemented effectively and, consequently, ensure that situations of discrimination such as those described in the judgment do not happen again. *Cf.* I/A Court HR. *Case of the Hacienda Brasil Verde Workers v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of October 20, 2016, Series C No. 318, para. 470.

¹¹⁹ I/A Court HR. *Case of the Hacienda Brasil Verde Workers v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of October 20, 2016, Series C No. 318, para. 340. *Cf.* ILO – Brazil. *Fighting forced labour: the example of Brazil*, 2010, p. 2010 (evidence file, folio 8529).

100. An inter-American judgment cannot ignore the fact that slavery, in its similar and contemporary forms, is rooted and results in poverty, inequality and social exclusion, with repercussions in the substantive democracies of the countries of the region. Accordingly, the analysis of the inter-American experience of protection of human rights (civil, political, economic, social, cultural and environmental) requires that the region's particularities be taken into consideration, because Latin America is the region with the highest level of inequality in the world.¹²⁰ In this regard, States in the region must be consequent with the provisions of the Social Charter of the Americas (2012)¹²¹ and its Plan of Action (2015),¹²² in order to progressively achieve and ensure the full realization of social justice on our continent.

Eduardo Ferrer Mac-Gregor Poisot
Judge

Pablo Saavedra Alessandri
Secretary

¹²⁰ Cf. Piovesan, Flávia, "Protección de los derechos sociales: retos de un *ius commune* para Sudamérica", in Bogdandy, Armin von, Fix Fierro, Héctor, Morales Antoniazzi, Mariela, and Ferrer Mac-Gregor, Eduardo (coords.), *Construcción y papel de los derechos sociales fundamentales: Hacia un Ius Constitutionale Commune en América Latina*, Mexico, UNAM/IIJ-Instituto Iberoamericano de Derecho Constitucional-Max Planck Institut für ausländisches öffentliches Recht und Völkerrecht, 2011, pp. 339-380, on p. 369.

¹²¹ *Social Charter of the Americas*, adopted by the OAS General Assembly on June 4, 2012, OEA/Ser.P/AG/doc5242/12rev.2, Cochabamba, Bolivia. The Preamble of the Charter establishes that: "considering that the Charter of the Organization of American States establishes 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 *Plan of Action of the Social Charter of the Americas*, approved by the Permanent Council, at the joint meeting held on February 11, 2015, *ad referendum* of the General Assembly at its forty-fifth regular session, OEA/Ser.G CP/doc.5097/15, Washington D.C., United States of America.

CONCURRING OPINION OF JUDGE EDUARDO VIO GROSSI,
INTER-AMERICAN COURT OF HUMAN RIGHTS
CASE OF THE HACIENDA BRASIL VERDE WORKERS V. BRAZIL
JUDGMENT OF OCTOBER 20, 2016
(Preliminary objections, merits, reparations and costs)

1. This concurring opinion on the judgment in reference¹ is issued in order to reiterate that the allusion made in the fourth operative paragraph of the judgment to “historical structural discrimination” does not signify that the Court is declaring the international responsibility of the State, in general, based on this.

2. Indeed, since the judgment does not make a ruling of any kind on the “historical structural discrimination” in the State and since, nevertheless, it notes that in “1995 [...] the Government of Brazil expressly acknowledged the existence of ‘slave labor’ in the country,”² and subsequently adopted measures in this regard,³ and bearing in mind that “[t]he Court finds that the State incurs international responsibility when, faced with the existence of structural discrimination, it fails to adopt specific measures with regard to the particular situation of victimization that reveals the vulnerability of a universe of individualized persons,”⁴ it is logical to conclude, as the Court does in the judgment, that “Brazil has not proved that it had taken, with regard to this case and at the time of the facts, the specific measures – in accordance with the circumstances of which it was aware of workers in a situation of slavery and of specific complaints against Hacienda Brasil Verde – to prevent the occurrence of the violation of Article 6(1) verified in this case.”⁵

3. Furthermore, it is worth emphasizing that the judgment indicates that the “economic status” of the individual is one of the grounds for discrimination prohibited by Article 1(1) of the American Convention;⁶ that “[t]he evidence provided to the case file reveals the existence of a situation that characterized discriminatory treatment based on the economic status of the victims rescued on March 15, 2000”⁷, and that “[p]overty, therefore, is the main factor behind modern-day slavery in Brazil, since it increases the vulnerability of a significant portion of the population, making them easy prey for enticers of slave labor.”⁸ Thus, it could be affirmed that the discrimination taken into consideration in the judgment has a greater connection to the economic

¹ Hereinafter, the judgment.

² Paras. 116 and 339 of the judgment. Hereinafter, each time that “para.” is indicated, it will be understood that this refers to the pertinent paragraph of the judgment.

³ Paras. 117 to 122.

⁴ Para. 338.

⁵ Para. 342.

⁶ Para. 335.

⁷ Para. 340.

⁸ Para. 340.

status or the poverty of the victims that to their exploitation as slave labor, which would be one of the consequences of their economic status or situation of poverty.⁹

4. It is worth stating that, since it has only been incumbent on the Court to rule, based on the information in the case file, on the specific case that has been submitted to its consideration, the international responsibility of the State, declared in the fourth operative paragraph of the judgment, relates only to the special situation of the said workers and not to the "historical structural discrimination" that existed at the time of the facts of the case. However, this constitutes the context in which those facts took place and, consequently and to a certain extent, explains them, even though it does not justify them.¹⁰

Eduardo Vio Grossi
Judge

Pablo Saavedra Alessandri
Secretary

⁹ Para. 343.

¹⁰ Paras. 110 to 115 of the judgment.

PARTIALLY DISSENTING OPINION OF JUDGE HUMBERTO ANTONIO SIERRA PORTO

INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF THE HACIENDA BRASIL VERDE WORKERS V. BRAZIL

JUDGMENT OF OCTOBER 20, 2016

(Preliminary objections, merits, reparations and costs)

1. The purpose of this opinion is to explain the reasons for my partial dissent with the majority decision of the judges of the Inter-American Court of Human Rights (hereinafter "the Court") in the judgment of October 20, 2016, in the case of the *Hacienda Brasil Verde Workers v. Brazil*.

2. My discrepancy with the position adopted refers to the fourth operative paragraph in which the Court determined the violation of Article 6(1) of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, that occurred in the context of a "situation of historical structural discrimination," as well as to the sixth operative paragraph in which it determined the violation of the right to judicial protection established in Article 25 of the American Convention.

A. Dissent with regard to the violation of Article 6(1) of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, that occurred in the context of a situation of historical structural discrimination

3. The Court determined in the judgment in this case that "the State incurs international responsibility when, faced with the existence of structural discrimination, it fails to adopt specific measures with regard to the particular situation of victimization that reveals the vulnerability of a universe of individualized persons. It is the victimization of such persons that exposes their particular vulnerability, and this calls for specific protective actions that were omitted in the case of the individuals recruited to work in Hacienda Brasil Verde."¹

4. In addition, the Court established that the 85 workers rescued on March 15, 2000, shared "some characteristics of specific victimization," such as that "they came from the poorest regions of the country, with the lowest human development and possibilities of work and employment, and they were illiterate with little or no schooling." The Court also indicated that "[t]his placed them in a situation that made them more susceptible to recruitment by means of false promises and deception. This situation of imminent risk for a specific group of people with identical characteristics, from the same regions of the country,

¹ Paragraph 338 of the judgment.

had historical roots and had been known since, at least, 1995 when the Brazilian Government expressly acknowledged the existence of “slave labor” in the country.”²

5. Finally, the Court found that “the State failed to take into account the vulnerability of the 85 workers rescued on March 15, 2000, owing to discrimination based on their economic status.”³ Consequently, it was responsible for the violation of Article 6(1) of the American Convention, in relation to Article 1(1) of this instrument, that occurred in the context of a situation of historical structural discrimination based on the economic status of the 85 workers identified in the judgment.⁴

6. I disagree with the decision reached by the majority for three reasons. First, I consider that determination of the existence of “historical structural discrimination” would require an in-depth analysis, which was not made in the judgment in this case. When determining the violation, the Court did not make a detailed analysis that took into account economic and social aspects of Brazil’s public policies; it merely considered that the individuals shared some living conditions (poverty and lack of education).

7. In this regard, I consider that, from the evidence available in this case, it could not be concluded that there had been any discrimination against the 85 workers rescued during the 2000 inspection. The Court did not have reliable evidence on the circumstances of the workers in relation to the other inhabitants of that part of Piauí. Furthermore, there was no evidence of the living conditions of the inhabitants of Piauí in general, especially before the recruitment to work in Hacienda Brasil Verde.

8. Even though poverty may be considered a condition that could potentially place victims in a situation of vulnerability, an analysis must be made that determines that discrimination effectively existed against a specific population. The mere presumption of the impact of poverty cannot have the automatic consequence that discrimination existed against a specific group. In this case, the Court did not have evidence to consider that the whole population of Piauí was subject to “historical structural discrimination”; nor was their evidence to determine that the 85 workers were subject to such discrimination.

9. Notwithstanding the fact that the determination of a violation was made with regard to the 85 workers, it is unclear whether, for “historical structural discrimination” to exist against them *in particular*, it is necessary that a *general* “historical structural discrimination” existed against everyone living in poverty in Piauí. The Court’s argument would appear to indicate that, whenever victims shared a common characteristic (which could place them in a situation of vulnerability), structural discrimination would automatically exist based on this fact alone.

10. Second, I consider that the common characteristics shared by the workers in this case did not constitute sufficient factors to declare the existence of structural discrimination against them. Although it is true that, in general, the workers subjected to conditions similar to slavery shared some characteristics, these characteristics are also shared by a large number of people in Brazil, who are living in poverty and have low levels of schooling. In this regard, it was not correct to conclude the existence of historical structural discrimination against the Hacienda Brasil Verde workers in this case.

² Paragraph 339 of the judgment.

³ Paragraph 341 of the judgment.

⁴ Paragraph 343 of the judgment.

11. Third, the judgment did not adequately take into consideration the measures adopted by the State to prevent and punish slavery, particularly in rural areas. Despite the State's efforts, the determination of the existence of historical structural discrimination against the Hacienda Brasil Verde workers would appear to be the result of the existence of people living in poverty and also in a situation of slavery in Brazil, and the corresponding condemnation of the State on that basis. The existence of structural social problems does not automatically give rise to the international responsibility of Brazil.

12. In conclusion, I consider that the Court's determination of the existence of a situation of historical structural discrimination in Brazil was incorrect. The Court's decision lacks the necessary detailed analysis and a substantiation that is consequent with the general characteristics of the population and the specific causes and consequences of a situation of discrimination, in particular when this refers to elements, such as poverty, that may allow for different interpretations. Furthermore, I consider that the majority decision disregards the measures taken by the State in recent decades and the reality of Brazil, and is based on a reductionist analysis, according to which the existence of a situation of vulnerability gives rise directly, without further analysis, to the international responsibility of the State.

B. Dissent regarding the violation of the right to judicial protection established in Article 25 of the American Convention

13. The Court determined in the judgment in this case that the State is responsible for violating the right to judicial protection, established in Article 25 of the American Convention on Human Rights, in relation to Articles 1(1) and 2 of this instrument. To reach this determination, the Court used the same arguments that it had used previously to determine the violation of Article 8 of the American Convention, such as the duration of the proceedings and the authorities' lack of diligence.

14. In this regard, I disagree with the majority decision because I consider that the analysis of the violation of Articles 8 and 25 of the Convention should be differentiated and made with arguments analyzed independently. I find it very relevant that the Court makes a distinction between the two articles and the reasons why it may be considered that they have been violated.

15. In this regard, I share the consideration of the former judge of the Court, Cecilia Medina Quiroga, that Article 25 recognizes the right of the individual to have his human rights protected in the domestic sphere in a simple, prompt and effective manner; while Article 8 does not establish the right to a remedy, but rather to due process of law; in other words, the series of requirements that must be met by the procedural instances to protect an individual's right that judicial proceedings are decided with the maximum justice possible.⁵ These two rights are different in nature and their relationship is one of substance to form, as this Court has indicated, because Article 25 recognizes the right to a judicial remedy, while Article 8 establishes how this should be processed.⁶

16. Article 25 is violated: (i) when no remedy is established in a State's laws, or the law defines this remedy inadequately, and (ii) when judges fail to apply the said remedy correctly. I consider that when the concepts behind the two articles are confused, it makes it difficult to identify the precise reasons why they have been violated. In the end, for

⁵ Partially dissenting opinion of Judge Medina Quiroga, Case of the 19 Tradesmen v. Colombia. Merits, reparations and costs. Judgment of July 5, 2004. Series C No. 109, paras. 1 and 2.

⁶ Partially dissenting opinion of Judge Medina Quiroga, Case of the Gómez Paquiyauri Brothers v. Peru. Merits, reparations and costs. Judgment of July 8, 2004. Series C No. 110, para. 3.

example, elements corresponding to the “reasonable time” of Article 8 are used to make considerations on the prompt nature of the remedy required by Article 25.

17. Based on the above, I am able to conclude that the Court has not analyzed the violation of Articles 8 and 25 of the American Convention correctly, confusing their content, and failing to differentiate the actions that constitute violations of one and the other. This has resulted in a lack of clarity in the Court’s analysis.

Humberto Antonio Sierra Porto
Judge

Pablo Saavedra Alessandri
Secretary