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Confronting Human Trafficking in Brazil: Accomplishments and Challenges



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The Brazilian human trafficking experience, especially for the purpose of forced labor, can be compared to a chess game. Strategy, movements, advances and setbacks mark the history of the fight against this atrocious crime. We have worked hard in the last two decades. But besides the accomplishments, we always face new challenges.

This story begins in September 1989, when *José Pereira*, seventeen years-old, and a co-worker, nicknamed *Paraná*, tried to escape from gunmen that prevented the departure of workers from the farm *Espírito Santo*, state of *Pará*. They and another sixty workers were forced to work without pay in inhumane and illegal conditions. After the escape, the farm staff ambushed them. With rifle fire, they killed *Paraná* and struck the hand and the face of *José Pereira*. The criminals put *José* in the trunk of a car and later, *José*, who was pretending to be dead, was abandoned on the road, twenty kilometers from the crime scene. *José Pereira* asked for help at the nearest farm and was driven to a hospital. In the capital of *Pará*, where he underwent treatment for injuries he suffered, *José Pereira* reported the working conditions to the Federal Police. When it went to the farm, the Federal Police found sixty workers who were later rescued and received money to return home. What happened? Nothing happened, the gunmen had fled, nothing has been investigated and no one was punished.

This is an example of Brazil's failure to fulfill its obligations of human rights protection, judicial protection and safety at work. Therefore, some non-governmental organizations filed a complaint against Brazil in the Inter-American Commission on Human Rights of the Organization of American States in 1994. After years of discussion, the Brazilian government acknowledged its responsibility in the case of *Jose Pereira*, and signed a friendly settlement agreement. It was from this complaint that the different sectors of Brazilian society recognized the existence, severity and characteristics of forced labor in the country.

In the last twenty years, Brazil has made concerted efforts to identify and prosecute cases of contemporary slavery. From the mid-1990s to the end of 2015, some 49,000 workers were "rescued" from rural and urban workplaces in which inspectors determined that they had been reduced to a condition analogous to slavery.

In 1995 the Special Mobile Inspection Group was created. Once informed of the practice of slave labor, inspectors from the Ministry of Labor and labor prosecutors, accompanied by agents from the Federal Police and the Federal Highway Police go to the location to ascertain the facts. The mobile group collects testimonies from the workers, takes pictures, films the crime scene and prepares a report that will form the basis of the charges in criminal and civil cases. Brazil has a specialized judicial branch called Labor Justice where it is common to sue employers who violate labor rights. Labor Justice is not criminal justice but it enables workers to get compensation. Under the supervision of the inspectors, the labor contracts are cancelled, employers are charged for back pay and "unemployment insurance payments" are provided.

The outcome of the inspections made it clear to the Brazilian government that a more sophisticated approach and a greater range of administrative responses were required to address contemporary slavery. Since its enactment in 1940, the Brazilian Penal Code has pronounced the conduct of "reducing a person to a condition analogous to that of a slave" as a felony. And yet, apart from being referenced by criminal law commentators, this was a forgotten provision. In 2003, Congress passed a statute that reformed Article 149 of the Brazilian Penal Code. The reform stemmed from the experiences of the mobile inspection teams and their partners inside and outside the government. Now it's a crime to reduce someone to a condition analogous to that of a slave in four situations: submit them to (1) forced labor; (2) debilitating workdays; (3) degrading conditions of work; or (4) restrict their freedom of movement for any reason.

This approach rejects the idea that "real" slavery requires control of the body, which would be primarily an offense against individual liberty. Thus we have a definition of slavery that does not require forced labor and doesn't involve the concept of locks and chains. I don't know if it is a concept that is at the forefront, but it has worked for us for more than ten years. The penalty for this crime is two to eight years in prison, plus fines.

A year later, in 2004, a list was organized by the government to publicize the names of companies determined to be exploiting workers under conditions analogous to slavery. It's called the "dirty list," a kind of blacklist, where the names of corporations conducting forced labor are put. When a corporation's name is on the list, it can't receive loans from federal banks. It opens them up to lawsuits, international trade restrictions and reputational damage on the national and international market. **It is an effort to promote social responsibility.** The "dirty list" is a controversial name-and-shame strategy towards eliminating slavery from major industries.

To increase the impact of the "dirty list," the Brazilian Pact to Eradicate Slave Labor was created in 2005. It aims to implement tools so that the corporate sector and Brazilian society avoid dealing with suppliers that have made use of slave labor. The initiative already joins 130 Brazilian companies, commercial associations and social organizations, which are responsible for an annual gross income equivalent to more than 20% of Brazil's gross national product.

Recently, in 2014, Congress passed a Constitutional Amendment, which expropriates urban or farm real estate in which slave labor has occurred, without compensation. Proceeds from the sale of real estate and other property used in the commitment of this crime will be applied to urban or agrarian reform, or to support anti-slavery efforts.

As I said we have already done much but we still face new challenges. For example, a concerning development is a Senate Bill passed by a Joint Committee that dramatically narrows the definition of slave labor. That could have a chilling effect on prosecutors in both the labor and the criminal courts. Putting workers in degrading conditions or submitting them to debilitating workdays would be excluded as slave labor crimes.

But getting back to the chessboard, I have been involved in this match since 2008 when I adjudicated dozens of criminal cases involving slave labor in rural areas of the Amazon region. Nowadays, I don't sit on the criminal bench, but as a law professor, last year, I founded the "Slave Labor and Human Trafficking Clinic of the UFMG Law School," with support from the University of Michigan. It is part of a pioneering initiative, with a *pro bono* ethos, to form an international system of Law Clinics. It is located in *Minas Gerais*, the state where the most cases of slave labor in Brazil were documented in 2014.

The UFMG Clinic, just as Brazilian higher education, has three components: (1) outreach, (2) teaching, and (3) research.

(1) Through our outreach component, we provide free legal assistance to survivors. Students work directly with victims to address their legal needs, which, in some cases, might lead them to also identifying possible human rights violations. The survivors are often illiterate and don't have financial resources, so accessing remedies is not easy for them.

(2) Every semester, the clinic's directors teach law students about slave labor and human trafficking in a classroom setting. Class lectures, exercises, and simulations empower the students and help them to begin to develop an important set of skills they will use to advance human rights as professionals.

(3) Students enrolled in the clinic conduct research and they also write papers, attend, organize and promote seminars.

We work with government agencies and NGOs to develop a network of contacts. If human trafficking is a transnational crime, we have to concert our efforts transnationally. For me, that is our biggest challenge: we should work together, we should cooperate with each other. This will ensure a constant exchange of information between on-the-ground actors, which will, in turn, help give the estimated millions of slaves in the world what they deserve: a voice.

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