



July 2008

Information on Brazil

Compliance with ILO Convention No.29 on Forced Labour (ratified in 1957)

RE: Forced labour in Brazil

Since 2003 the Brazilian Government has shown its commitment to tackling forced labour (referred to as slave labour in Brazil) through a number of policy initiatives which have released thousands of people from forced labour in the Amazon.

Government leadership on the issue

The Government has taken an active role in recognising the existence of slavery and promoting discussion of the issue among the general public, the media and within government departments. In particular it is worth highlighting the appeal from the President to all farm owners to co-operate with the state and become allies in combating slavery;¹ the recognition at the UN Commission on Human Rights in 2004 that slave labour continues to exist in Brazil; and the commitment by the Government to eliminate slave labour by 2006.

The Government also set up the National Commission for the Eradication of Slave Labour (CONATRAE) which is a permanent forum bringing together different government departments, the federal police and NGOs to facilitate co-operation between these bodies and to discuss practical solutions to the problem of slave labour. On 11 March 2003, President Lula da Silva launched the *National Plan for the Eradication of Slavery* which set out a clear strategy for addressing the issue through a variety of mechanisms.

Improving the definition of slavery in Article 149 of the penal code

On 12 December 2003, legislative amendments to the offence of reducing someone to conditions analogous to slavery were approved which ensure that those responsible for recruiting or transporting workers into slavery have committed an offence under the modified law. Penalties for offenders are also increased in certain circumstances (for example where the crime is perpetrated against a minor).

The minimum penalty for this offence remains two years in prison, although many had expected that the minimum sentence would be increased to five years in prison. The Government is currently proposing new legislation which will establish tougher penalties for those convicted of reducing another person to a condition analogous to slavery.

¹ *Um apelo aos bons fazendeiros*, Correio Braziliense 10 February 2004

Expropriating property of those who use slavery

Since 2001, Brazil's Congress has been considering an amendment to Article 243 of the Constitution that would allow the expropriation, without compensation, of land and property belonging to those who use slave labour. Amendment 438/2001 also provides for the expropriated land to be used as part of the Government's agrarian reform programme and thereby benefit the very people that have been exploited

If approved this would provide a real sanction against those using slave labour. Despite having been approved by the Senate in 2003, the amendment has been stalled in the Chamber of Deputies since 2004 where it has met strong opposition from Deputies who represent the rural sector.

A petition urging the Congress to approve the amendment has received support from a variety of organisations and individuals, including most members of CONATRAE and hundreds of thousands of Brazilian citizens.

In October 2004, the Castanhal Cabeceiras farm was expropriated by decree by the President and declared of social interest for the purposes of agrarian reform after forced labour was used on the farm. However, the decree has not been implemented due to an appeal which is currently in progress at the Supreme Court.

Preventing those who use slave labour from accessing public funds

Since 2004, individuals or companies who have used slave labour are put on a "Register of Employers" list which is regularly updated by the Ministry of Labour and sent to public administration bodies and banks administering public funds to ensure that no grants, credits or other forms of financial assistance are extended to those who have used forced labour.

Those registered on the list receive visits from the labour inspectorate for two years after their name is registered. If there is no repeat offence and they have paid their fines and debts to the workers the name can then be removed. As of December 2007, the list included 185 employers from 16 states, involving workers employed in forest clearance and ranching on agricultural frontiers of the central savannah (*cerrado*) and Amazonia, as well as labourers on plantations in the states of Sao Paulo, Minas Gerais and Rio Grande do Sul.

Despite the fact that those registered on the list have already been convicted by a court, the National Confederation of Agriculture and Livestock made a complaint to the Supreme Court challenging the legality of the list and asked for the names to be removed while the case was reviewed. Some courts agreed to this although the Attorney General contested these decisions. The Government is seeking to draw a line under this issue by passing legislation which will formally establish the Register, rather than relying on the ministerial decree which set it up (PLS No. 25/05). It is also proposing a Bill which will ensure that those who have used slave labour cannot obtain tax incentives or credits or participate in public tendering processes.

Preventative measures

The Government, in conjunction with civil society and the ILO, has been successful in raising awareness of the issue of slave labour and in engaging business in developing initiatives to ensure that their supply chains and products they are using are not in any way connected to the use of slave labour.

For example, the National Covenant for the Eradication of Slave Labour was launched in 2005 and now has over 120 signatories including large supermarket chains, industrial groups and financial institutions which have committed themselves not to buy products resulting from slave labour. For example, the Citizens Charcoal Institute focuses on eradicating slavery from charcoal production and supporting the reintegration of rescued workers into the labour market. The Social Cotton Institute has a similar objective. In December 2005, the Brazilian Banking Federation (FEBRABAN) also showed its commitment to combating slave labour by signing a declaration in which it undertook to dissuade its associates from granting credits to businesses which use slave labour.

Educational projects have been undertaken to prevent slave labour (e.g. the “slavery, don’t even think about it” initiative, run by the NGO, Reporter Brasil), along with the establishment of “Rights Shops” which are run by local NGOs and provide information on workers’ rights, the risk of enslavement, legal assistance and facilitate access to identity papers for those at risk or who have been rescued, especially in isolated areas. In 2004, the human rights minister, Nilmário Miranda, also announced that free hotlines would be introduced to report human rights abuses, including slave labour.

Programmes have been initiated to provide those who have been freed from slave labour with access to credit, land and agriculture related technical assistance or training. Given that a significant proportion of workers freed from slave labour have been freed more than once, there is an urgent need to strengthen projects which focus on agrarian reform and support for small scale rural agriculture, the generation of decent employment opportunities and the social inclusion of marginalised communities.²

The Special Mobile Inspection Group

The Special Mobile Inspection Group was established in 1995 as a federal and multi-agency group (made up of labour inspectors, federal police officers and attorneys from the Labour Prosecution Service) which would be capable of challenging slavery in remote areas where estate owners exercised significant political power at the local level. Since this time, up to the end of 2007, the Special Mobile Inspection Group has carried out more than 620 operations involving the inspection of more than 1,870 estates and the release of more than 27,600 workers from forced labour.

On 2 July 2007, the Special Group completed its biggest raid to date on a plantation owned by the country's largest ethanol producer in Para state. Over 1,100 workers, mostly from the neighbouring state of Maranhao, were released. Many of the workers were ill as a result of the extremely bad living conditions. They were forced to work

² One article cited statistics from the Department for Labour Inspections stating that in the eight year period up to 2004, 40 per cent of workers freed from forced labour had been released more than once. *Correio Brasiliense, De volta ao trabalho escravo*, 1 February 2004

from 3am to 5pm for little or no money and those who were paid received just US\$5.00 per month.

In March 2007, raids resulted in the release of 288 workers from forced labour in six sugarcane plantations in Sao Paulo State, and the release of 409 workers, 150 of whom were indigenous people, from the ethanol distillery Centro Oeste Iguatemi, in Mato Grosso do Sul.³

Between 2004 and 2006, inspectors raided at least seven charcoal-producing camps which supply pig iron exporters (charcoal is used to produce pig iron, a basic ingredient of steel), where they found and released workers that they determined to be in slavery. Marcelo Campos from the Special Mobile Inspection Group has said that “Slavery is endemic to the charcoal camps that supply the pig iron industry”⁴

The number of operations carried out by the Special Group has generally increased over the years, reflecting improvements in its operational procedures and increased capacity. The latter has been boosted by the provision of additional resources such as 16 four-wheel drive vehicles and extra personnel as well as increased daily payments to civil servants working in the interior of the country.

Procedural changes which have had a positive impact include the incorporation of federal police officers into all Special Group operations which facilitate charges being brought against those using slave labour (as labour inspectors cannot bring criminal charges) and provides protection for the members of the Special Group; the introduction of mobile courts to accompany the Special Group which can impose immediate fines, freeze bank accounts and seize assets, thereby making it easier to get workers paid the money they are owed; and improved co-operation with several regional labour departments which assist in carrying out inspections.

This is not to say that there are not problems that still need to be overcome. Delays between a case being reported to the Special Group and the inspection being carried out can also be lengthy, sometimes up to 40 days, depending on the location, access and security conditions surrounding the estate. The Government is intending to introduce a computerised control system for complaints to speed up information processing and response times.

Violence and intimidation continue to be used against those working to stop slave labour, especially in the states of Pará and Tocantins. In October 2003, the labour judge Dr Jorge Antônio Ramos Vieira had to leave Parauapebas after receiving repeated death threats and on 11 February 2004, his deputy was killed in a collision with a lorry while travelling from Marabá to Parauapebas. In Tocantins state, the prosecutor Dr Mario Lúcio de Avelar had to leave Palmas after receiving threats. On 28 January 2004, three officials from the labour ministry and their driver were murdered while carrying out investigations of farms in Minas Gerais. Individuals who work for the non-governmental organisation, the Pastoral Land Commission (CPT), in Tocantins state had to leave the area after receiving repeated threats.

³ Amnesty International Report 2008, London, 2008

⁴ *The Secret World of Modern Slavery*, Bloomberg News, December 2006

This underlines why federal police are essential for each inspection. If they are not available, as was the case during their 80 day strike in early 2004, it is impossible for the inspections to be carried out.

In February 2007, Congress approved an amendment to a law (No.6.272/2005) which would remove labour inspectors' power to review labour relations between employers and workers and issue on the spot fines or order outstanding payments to be made to workers. If implemented this law would have seriously undermined the work of the Special Group as it requires all cases to be settled by labour courts which would involve long delays and remove the immediate sanction of employers and immediate compensation for rural workers that the current system has operated so effectively. However, on 16 March 2003, President Lula da Silva vetoed the amendment (often referred to as Amendment 3) and thereby ensured the continued effectiveness of Special Group operations.

In September 2007, all inspections were suspended after a Senate committee requested that a police inquiry be undertaken into the procedures used by the Special Group during one of its inspections. Inspections were only resumed in October after the Ministry of Labour concluded an agreement with the Attorney General of the Union under which the latter agreed to provide legal assistance to the Special Group and to assist labour inspectors should they be implicated in any proceedings arising from an inspection.

Ending impunity and imposing appropriate sanctions

The Special Group and mobile courts have ensured that those who use forced labour are fined and required to pay compensation to the workers affected. Successful claims for compensation rose from R\$1.9 million (US\$654,270) in 2002 to R\$5.7 million (US\$1,962,810) in 2003.⁵ The Government informed the Committee of Experts in 2008 that the total of the fines imposed for violations of labour legislation is constantly increasing and record amounts of compensation for damages suffered by workers or group moral damage have been granted. If these fines and compensation payments are actually collected then they do constitute an important punishment and disincentive to individuals to use forced labour.⁶

The Federal Attorney-General's Office reported that between 1996 and 2006, the Ministry of Labour and Employment passed over 882 reports of slave labour for investigation. This led to 110 criminal prosecutions for this offence, but only three convictions (one of which was commuted to community service).

Part of the reason for the failure to successfully prosecute those using forced labour has been the lack of clarity as to whether cases analogous to slavery fall under local or federal jurisdiction. However, on 30 November 2006, the Supreme Labour Court issued

⁵ *Dobra número de pessoas tiradas da escravidão*, Geralda Doca, O Globo, 23 January 2004. In the case of the firm Lima Araújo Ltda., which is still pending in the Marabá Labour Court, labour prosecutors have demanded compensation equal to 40 per cent of the total assets of the firm.

⁶ There do not appear to be any publicly available figures regarding the number of fines levied and paid. Fines below a certain amount are often not followed up because it is considered to be too administratively costly. Clearly where fines are imposed but not collected, then a situation of impunity exists and the abuses are likely to continue.

an order which states that the competence for the trying the crime of reducing another person to a situation analogous to slavery lies with the federal courts. Hopefully this will resolve the jurisdiction question and result in more effective prosecutions.

However, some concern remains that, even if successfully prosecuted, the sentences handed down under the existing system will not act as a deterrent. In Brazil, if someone is convicted and sentenced to a prison term of less than four years, this can then be converted into social services (e.g. making food donations to the poor).

It is therefore important that the Government's proposed new legislation for tougher penalties for those convicted of reducing another person to a condition analogous to slavery is introduced as a matter of urgency so that the penal sanctions provided for by law "are really adequate and are strictly enforced" as required under Article 25 of Convention No.29.

Conclusions and recommendations

The Brazilian Government has shown a real commitment to eradicating forced labour despite not achieving its target of eliminating slave labour by 2006. The Government has had to deal with strong opposition from particular interest groups who have sought to use legislative and judicial mechanisms to block and undermine measures intended to punish those who are found to have used forced labour (e.g. challenging the legality of the Register of Employers, instigating an inquiry into the procedures used by the Special Group, seeking to remove labour inspectors' powers to issue on the spot fines and award compensation payments, etc.). However, it has shown a determination to take forward its agenda against forced labour despite these difficulties.

Two issues remain critical to ensuring the effective eradication of slave labour in Brazil. Firstly, further progress in making the punishments for the use of forced labour a real deterrent to those who are considering it. Specifically this means increasing the penal sanctions for the crime of reducing someone to conditions analogous to slavery and ending the impunity that individuals who use forced labour currently enjoy from custodial sentences, and passing legislation which allows expropriation of property (without compensation) from those using slave labour.

Secondly, projects which seek to prevent forced labour through agrarian reform, support for small scale rural agriculture, the generation of decent employment opportunities and the social inclusion of marginalised communities should be provided with greater support. The ILO and other inter-governmental organisations should consider how they can support such activities.