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REPORT No. 117/19

PETITION 833-11

REPORT ON ADMISSIBILITY

FREED WORKERS OF THE BOA-FÉ CARU PLANTATION
BRASIL

Approved electronically by the Commission on June 7, 2019.

Cite as: IACHR, Report No. 117/19. Petition 833-11. Admissibility. Freed Workers of the Boa-Fé Caru Plantation. Brazil. June 7, 2019.



I. PETITION DETAILS

Petitioner:	Carmen Bascarán Center for Justice and International Law (CEJIL) and the Center for the Defense of Life and Human Rights (CDVDH)
Alleged victims:	Freed workers of the Boa-Fé Caru Plantation
Respondent State:	Brazil ¹
Rights invoked:	Articles 3 (juridical personality), 4 (life), 5 (humane treatment), 6 (freedom from slavery), 8 (fair trial), 22 (freedom of movement and residence), and 25 (judicial protection) of the American Convention on Human Rights, ² all in relation to Article 1.1 (obligation to respect rights)

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition:	June 17, 2011
Notification of the petition to the State:	May 11, 2017
State's first response:	September 12, 2017

III. COMPETENTE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes, American Convention (ratified September 25, 1992)

IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

Duplication of procedures and International <i>res judicata</i>:	No
Rights declared admissible:	Articles 3 (juridical personality), 4 (life), 5 (humane treatment), 6 (freedom from slavery), 8 (fair trial), 22 (freedom of movement and residence), 25 (judicial protection), and 26 (economic, social, and cultural rights) of the American Convention, all in relation to Article 1.1 (obligation to respect rights)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, as called for in Session VI
Timeliness of the petition:	Yes, as called for in Session VI

V. ALLEGED FACTS

1. The Center for Justice and International Law (CEJIL) and the Carmen Bascarán Center for the Defense of Life and Human Rights (CDVDH), (hereinafter "plaintiff organizations") allege that the Brazilian government be held to account for the murders of "Zé Motoqueiro," "Antônio José," "Piauí," and "Negão," and

¹ In accordance with Article 17.2.a of the Commission Regulations, Commissioner Flávia Piovesan, a Brazilian national, did not take part in either the debate or the ruling on the present matter.

² Hereinafter, "American Convention."

³ Both parties' statements were duly conveyed to the opposing party.

the exploitation under conditions of modern-day slavery of Aldenir Roxo and the other freed workers⁴ of the Boa-Fé Caru Plantation, located in the state of Maranhão, in 1999. The plaintiffs state that the facts presented constitute part of a wider context of violations of this nature in Brazil more generally, aggravated by a high rate of impunity, especially in the state of Maranhão where nearly 70% of employers caught using slave labor face no consequences.

2. They point out that the Boa-Fé Caru Plantation is located in the village of Caru, a rural area under the jurisdiction of the municipality of Centro Novo, Maranhão, and which consists of various farms owned by Gilberto Andrade. The plaintiffs state that between the years 1998 and 2005, four enforcement actions were carried out by the Ministry of Labor and Employment's Special Mobile Group (hereinafter GEMMTE, according to its Portuguese acronym). Each time, workers were found to be exploited and living in subhuman conditions tantamount to slavery. Nevertheless, they cite the ineffectiveness of the investigation of the initial complaints filed, given the total lack of any federal government presence in the area.

The exploitation of Aldenir Rocha and other workers, both male and female

3. Aldenir Rocha was approached with an offer to work on the Boa-Fé Caru Plantation on May 4, 1999. The plaintiffs state that he was transported in an improvised manner and came to live with other workers in dilapidated housing akin to warehouses or corrals. According to their reporting, the housing structures lacked access to sanitation, potable water, first-aid kits, medication, or any means of medical attention whatsoever. The workers would buy the goods they needed for their survival from the farm's store, at above-market prices. They allege that all costs for medication, food, clothing, and other goods were itemized and deducted from their wages, which were then never paid out. Furthermore, the workers were prevented from leaving the premises by means of continual threats made against them.

4. The plaintiff organizations indicate that between September 21 and 30, 1999, following the receipt of a complaint regarding the workers' laboring under conditions of slavery, the GEMMTE enforcement actions were carried out at the Boa-Fé Caru Plantation. During their operations, they witnessed the deplorable working and living conditions, the lack of payment of wages, and the workers' being prevented from leaving the premises. During their operations, 27 male and female workers were freed, all of them listed as alleged victims in the present petition.

The murder of workers "Zé Motoqueiro," "Antônio José," "Piauí," and "Negão"

5. The plaintiffs state that on September 25, 1999, GEMMTE agents were sought out by the workers who had worked on the Boa-Fé Caru Plantation and recounted facts identical to those witnessed during the operation. Furthermore, they filed complaints regarding several murders of workers which had taken place on the premises and informed the agents that the mortal remains of "Zé Motoqueiro," "Antônio José," "Piauí," and "Negão" had been buried there. Of these four killings, three of them had taken place because the victims asked to be paid for their work.

Internal measures taken

6. Following the enforcement actions, the report prepared by GEMMTE was sent to the Federal Office of the Public Prosecutor (hereinafter "MPF," according to its Portuguese acronym) for the launching of a police probe. The probe was undertaken in June of 2000 against Gilberto Andrade for the crimes of homicide, subjecting workers to conditions tantamount to slavery, violation of workers' freedom of contract,

⁴ Oranildo da Silva Costa, Delrubens da Silva Lopes, Abdias Silva, Jailson Ferreira dos Santos, Luis Ginkes, João Martinho Vieira de Sousa, Lucival da Costa Silva, Lídio Viana Vêras, Nelson Carlos Costa Sousa, Ermirio Soares dos Santos, Adailton Pinheiro, Francisco das Chagas Cordeiro de Farias, Antonio Gomes da Rocha Gatinho, Cleiton Carvalho, Erivaldo de Freitas Cruz, Jeofran Carvalho de Souza, Francisco Ferreira de Aguiar Filho, Edmilson Durans, Raimundo Cruz dos Santos, Valderi Gonçalves da Silva, José Costa Lima, Gisele Ramalho Pereira, Jorge de Oliveira Brito, Maria Isabel Sousa, Antônio Ferreira, and José Edilson Mota dos Santos.

violation of workers' rights as guaranteed under labor law, and corpse concealment.⁵ The plaintiffs state that the probe in question also led to a criminal case being brought by the Federal Ministry of Justice in the year 2000.

7. However, after sending a copy of the file to the State Court of the State of Maranhão on June 27, 2000, in order to determine the crimes of homicide, the State Public Prosecutor of the Maracaçumé District has caused a negative conflict of jurisdiction, stating that the authority able to prosecute the aforementioned homicides would be the Federal Court. Its justification was based on the understanding that homicides would be crimes related to the reduction of the condition analogous to slavery and that the State Justice structure would be lacking to guarantee due process because of the paramilitary apparatus that would have Gilberto Andrade. Only on March 20, 2004, the Superior Court of Justice (hereinafter "STJ," according to its Portuguese acronym) decided for the jurisdiction of the Federal Court. After almost five years of reporting the murders, the MPF then requested the sending of the case to the Federal Police for a criminal investigation to be instituted, which was finally instituted on March 29, 2005. The petitioners state that until this petition was sent, 11 years have passed without the State taking steps to diligently investigate the facts, identify the victims and hold perpetrators accountable, characterizing a scenario of total impunity for homicides.

8. In June of 2000, criminal proceedings were launched in order to reach a verdict on the crime of subjecting people to conditions tantamount to slavery. The sentence in the court of the first instance was handed down on April 23, 2008, and Gilberto Andrade was condemned to 14 years in prison: 8 for subjecting people to conditions tantamount to slavery, 3 for corpse concealment, and 3 for luring workers into a state of entrapment. He was arrested on May 6, 2008; however, in a decision by the Regional Federal Court for the 1st Circuit (TRF1), he was given leave to remain a free man. On May 14, 2008, Gilberto Andrade's defense appealed to the TRF1 which, in its decision of October 26, 2009, decided to uphold the sentence. Following this, they filed a motion for a retrial, which was denied on July 13, 2010; in August 2010, they filed a motion for an extraordinary appeal with the Federal Supreme Court (hereinafter, Supreme Court) and a motion for a special appeal with the STJ. The plaintiffs state that, as of the time of the filing of their petition, neither of these motions had been ruled on. Furthermore, they state that Gilberto Andrade threatened several workers and witnesses during the criminal proceedings.

9. The government does not contest the version of the facts presented by the plaintiff organizations. However, it states that the petition does not meet the formal requirements necessary in order to for it to be heard. Firstly, it points out that the judicial branch, in accordance with judicial safeguards, heard and ruled on the present petition in accordance with the criminal procedures in effect since 2000. As such, it states that a reopening of the case by the Commission would violate the fourth instance doctrine. In its defense, it argues that the aforementioned case rests on the same grounds as the present petition and that Gilberto Andrade was sentenced to 14 years in prison and the payment of a fine fixed at 7,200 times the [monthly]⁶ minimum wage in effect at the time the crimes were committed. As for the investigation into the homicides, the government states that despite all measures having been taken in an adequate and timely fashion, Gilberto Andrade passed away during the course of the investigation. As such, the government states that it is impossible to retry a criminal case in order to get a homicide conviction due to the lack of there being any defendant.

VI. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

10. The plaintiff organizations claim unjust delay in the resolution of internal recourses, bearing in mind that: a) no criminal case was ever brought to reach a verdict on the counts of homicide; b) the judicial branch took more than 4 years just to resolve the jurisdictional conflict regarding the case's subject matter; and c) the appeals to higher courts stemming from the criminal convictions of slave labor could not be

⁵ Translator's Note: The Portuguese is expressed in the abstract. Although, given the foregoing information, one would expect there to be four separate counts of concealment of a corpse, the original text is ambiguous on this point.

⁶ Translator's Note: Although not stated explicitly in the original text, this is generally understood as a monthly sum in Brazil.

adjudicated until the petition was filed. As such, they are fighting to be granted an exception to the exhaustion of internal resources provision as outlined in Article 46.2c of the American Convention. The government, for its part, states that internal recourses were exhausted in observance of the principles of due process and that Gilberto Andrade was found guilty of employing slave labor on his property. However, it points out that its chances of trying him for the murders of “Zé Motoqueiro,” Antônio José, “Piauí,” and “Negão” were cut short by the death of the accused, which necessarily nullified all means of punishing him.

11. Based on publicly available information, the Commission verified that in the course of the criminal proceedings regarding the crime of slave labor, constitutional motions for appeal were denied by the TRF1, and that in February of 2011 Gilberto Andrade’s defense team resorted to filing motions on the grounds of inadmissibility. However, later on, they filed a motion to have the case dismissed due to the death of the accused, given the impossibility of his being punished and bearing in mind that other possible suspects were not investigated. Therefore, the Commission considers the internal recourses to have been exhausted, given the decisions rendered on the nullification of all means of punishment by the higher courts.⁷

12. On the basis of the investigation into the counts of homicide alone, arising from the information presented by the parties, the Commission finds that the perpetrators responsible for the homicides of the four workers have not been duly identified and brought to trial. In this matter, the government has merely noted the death of Gilberto Andrade and, accordingly, announced its dropping all the procedures related to the facts of the case. In situations relating to possible violations of the right to life, the internal recourses which ought to be taken into account for purposes of the petition’s admissibility are those which are related to the investigation and sanctioning of those responsible, which take the form of internal laws governing crimes and their prosecution. In the present case the Commission notes that, in accordance with the information provided, no measures were ever taken by the government for the purpose of investigating the deaths of the four workers, which thus gave rise to a general atmosphere of impunity. Therefore, it finds that an exception to the exhaustion of internal recourses provision laid out in Article 46.2c of the American Convention is warranted.

13. The petition was received on June 17, 2011, and, despite the fact that those facts date back to the year 1999, their effects in relation to justice being denied and the creation of a general atmosphere of impunity continue to be felt in the present day. Therefore, bearing in mind the context and the nature of the case, the Commission considers the petition to have been presented within a reasonable timeframe and that its request on admissibility regarding the timeframe for its presentation should be granted.

VII. ANALYSIS OF COLORABLE CLAIM

14. As relates to the government’s argument on the rules governing an appeal to a court of fourth instance, the Commission recognizes that it does not have jurisdiction to revise sentences handed down by national courts acting within their sphere of jurisdiction, insofar as they adhere to due process and judicial safeguards. However, it reiterates that within the bounds of its mandate it does have jurisdiction to declare a petition to be admissible, and to decide such case on its merits when this shall refer to internal procedures which may violate rights guaranteed under the American Convention.

15. As such, bearing in mind the questions of fact and of law brought forth by the parties and the nature of the matter under consideration, the Commission considers that, if proven, the facts described may constitute possible violations of Articles 3 (juridical personality), 4 (life), 5 (humane treatment), 6 (freedom from slavery), 8 (fair trial), 22 (freedom of movement and residence), 25 (judicial protection), and 26 (economic, social, and cultural rights) of the American Convention on Human Rights, all in relation to Article 1.1 of the same (obligation to respect rights).

⁷ Based on the information available, the Commission verified that the STJ issued a declaratory judgment on the nullification of all means of punishing Gilberto Andrade on November 3, 2011. It was not possible, however, to find information on the decision issued by the Supreme Court.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 3, 4, 5, 6, 8, 22, 25, and 26 of the American Convention, all with respect to Article 1.1; and

2. To notify the parties of this decision; to continue with the analysis on the merits, and to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 7th day of the month of June, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández García, First Vice President; Antonia Urrejola, Second Vice President; Margarete May Macaulay, Francisco José Eguiguren Praeli and Luis Ernesto Vargas Silva, Commissioners.