



INTERSECTIONALITY OF ETHNICITY AND POVERTY IN THE “FAZENDA VERDE V. BRAZIL” CASE: ANALYSIS OF ITS IMPACT ON INTER-AMERICAN JURISPRUDENCE ON FORCED LABOR AND ITS RELATIONSHIP WITH MODERN SLAVERY

INTERSECCIONALIDADE DE ETNIA E POBREZA NO CASO “FAZENDA VERDE V. BRASIL”: ANÁLISE DE SEU IMPACTO NA JURISPRUDÊNCIA INTERAMERICANA SOBRE TRABALHO FORÇADO E SUA RELAÇÃO COM A ESCRAVIDÃO MODERNA

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RESUMO

Este artigo analisa a decisão da Corte Interamericana de Direitos Humanos no caso Trabalhadores da Fazenda Brasil Verde vs. Brasil, com foco em como o tribunal aborda a interseccionalidade da etnia e da pobreza em seu pensamento sobre o trabalho forçado e a escravidão moderna. Através de uma metodologia jurídico-documental, são examinados os elementos-chave da sentença, como a análise do contexto, a determinação de um grupo vulnerável de pessoas pobres, a discriminação estrutural histórica e a responsabilidade do Estado. Conclui-se que esta decisão representa um marco na jurisprudência interamericana ao reconhecer a pobreza como parte da discriminação devido à posição económica, criando um novo grupo vulnerável e avançando padrões para vincular legalmente a pobreza e as violações dos direitos humanos. Isto abre portas para novos desenvolvimentos na luta contra o trabalho forçado e a escravatura moderna numa perspectiva de direitos humanos e interseccionalidade.

Palavras-chave: Corte Interamericana de Direitos Humanos, trabalho forçado, escravidão moderna, pobreza, etnia, interseccionalidade.

Abstract: This article analyzes the ruling of the Inter-American Court of Human Rights in the case of Fazenda Brazil Verde Workers vs. Brazil, focusing on how the court addresses the intersectionality of ethnicity and poverty in its thinking on forced labor and modern slavery. Through a legal-documentary methodology, the key elements of the sentence are examined, such as the analysis of the context, the determination of a vulnerable group of poor people, historical structural discrimination, and state responsibility. It is concluded that this ruling represents a milestone in inter-American jurisprudence by recognizing poverty as part of discrimination due to economic position, creating a new vulnerable group, and advancing standards to legally link poverty and human rights violations. This opens

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doors for new developments in the fight against forced labor and modern slavery from a human rights and intersectionality perspective.

Keywords: Inter-American Court of Human Rights, forced labor, modern slavery, poverty, ethnicity, intersectionality.

INTRODUCTION

The Inter-American Court of Human Rights (IACtHR) judgment in the case of *Workers of the Fazenda Brazil Verde v. Brazil*, dated October 20, 2016, marks a significant milestone in addressing structural discrimination and poverty from a human rights perspective. For the first time, the court considers poverty as part of the discrimination based on economic status under Article 1.1 of the American Convention on Human Rights (ACHR), creating a new vulnerable group of people living in poverty (IACtHR, 2016, para. 341; Vote of Judge Ferrer Mac-Gregor, 2016, para. 2). Notably, the judgment also analyzes the intersection between poverty and ethnicity in the context of forced labor and modern slavery.

This article aims to deeply examine how the IACtHR addresses the intersectionality of ethnicity and poverty in the *Fazenda Brazil Verde* case and determine the impact of this reasoning on the development of inter-American standards on forced labor and modern slavery. It seeks to demonstrate that this judgment opens new perspectives for a more comprehensive understanding of these serious human rights violations by focusing on the structural conditions of discrimination that facilitate them (Saba, 2012).

The article will first examine how the IACtHR analyzes the intersection between poverty and ethnicity in the context of forced labor and modern slavery, highlighting how the court finds that the enslaved workers at *Fazenda Brazil Verde* came from the poorest regions of Brazil, were mostly Afro-descendants or "mulatos," and were in a situation of special vulnerability due to their socioeconomic position and ethnic origin (IACtHR, 2016, paras. 112, 113, 339). This intersectional approach allows the Court to appreciate how different factors of discrimination intertwine to generate a greater risk of human rights violations (Ferrer Mac-Gregor, 2017).

Second, the impact of this intersectional reasoning on the development of inter-American standards on forced labor and modern slavery will be analyzed,



arguing that this judgment sets an important precedent by recognizing that poverty, combined with belonging to a historically discriminated ethnic group, places people in a position of extreme vulnerability to practices such as forced labor and slavery (Shahinian, 2010). This recognition implies that States have reinforced obligations of prevention and protection against these violations when dealing with groups in situations of special vulnerability.

Finally, the implications of this judgment for addressing structural discrimination from a human rights perspective will be explored, arguing that the intersectional approach adopted by the IACtHR offers a valuable tool for understanding and addressing the complex dynamics of discrimination that underlie serious human rights violations such as forced labor and modern slavery. This approach makes it possible to visualize how different axes of oppression intersect and mutually reinforce each other, generating situations of special vulnerability that require comprehensive responses from States (Crenshaw, 1991).

METHODOLOGY

To achieve the proposed objectives, this article adopts a legal-documentary methodology. An exhaustive analysis of the IACtHR's judgment in the case of *Workers of the Fazenda Brazil Verde v. Brazil* is carried out, examining how the court constructs its reasoning around the intersectionality of ethnicity and poverty. This analysis is complemented by a review of academic literature and documents from international organizations on poverty, discrimination, forced labor, and modern slavery. Reports from the Inter-American Commission on Human Rights (IACHR), United Nations Special Rapporteurs, and the International Labor Organization are used to contextualize the contributions of the judgment within the framework of previous developments in these matters, both in the Inter-American system and at the universal level.

Based on this documentary analysis, key elements of the judgment that mark a turning point in Inter-American jurisprudence are identified, such as the analysis of context, the determination of a vulnerable group of the poor, historical structural discrimination, and state responsibility. Finally, an interpretive exercise is carried out to project the impact of this reasoning on the future development of inter-American standards on forced labor, modern slavery, and the link between poverty and human



rights. The doors that this judgment opens for a more intersectional understanding of these issues and the design of more comprehensive public policies are explored (Chinchilla, 2012).

POVERTY AND ETHNICITY IN THE IACTHR'S CONTEXTUAL ANALYSIS

One of the most novel aspects of the judgment in the Fazenda Brazil Verde case is the in-depth contextual analysis carried out by the Inter-American Court of Human Rights (IACtHR). This analysis is fundamental to understanding the structural conditions that facilitated the existence of forced labor and slavery in the Fazenda. The Court notes that slave labor in Brazil has historically been linked to poverty and the concentration of land ownership, and despite the legal abolition of slavery in 1888, these structural causes led to its continuation and even increase in the 20th century due to the expansion of rural work techniques that required a lot of labor (IACtHR, 2016, para. 111). In addition to poverty, the Court identifies another key factor: the majority of victims of slave labor in Brazil are Afro-descendants or "morenos (mulatos)," originating from the poorest regions of the country (IACtHR, 2016, para. 112). This evidences the intersection between poverty and ethnicity, which places certain groups in a position of greater vulnerability (Safa, 2005). This intersectionality is a key concept in critical race theory and feminism, which holds that different forms of discrimination do not act independently, but intersect and reinforce each other (Crenshaw, 1991; Collins, 2000).

The contextual analysis carried out by the IACtHR is fundamental because it makes visible how structural discrimination against poor and Afro-descendant people creates conditions for the persistence of practices such as forced labor and slavery. These are not isolated facts but are rooted in historical patterns of exclusion and inequality (Dulitzky, 2008). This is consistent with the concept of "structural discrimination" developed by the United Nations Committee on Economic, Social and Cultural Rights (CESCR), which refers to "forms of discrimination against some groups that are pervasive and persistent and deeply entrenched in social behavior and organization" (CESCR, 2009, para. 12). As Judge Eduardo Ferrer Mac-Gregor points out in his reasoned opinion, this is the first case where the IACtHR finds the



international responsibility of a State for perpetuating a historical structural situation of exclusion (Vote of Judge Ferrer Mac-Gregor, 2016, para. 84). The analysis of the context is what makes this structural discrimination visible. This represents a significant advance in Inter-American jurisprudence, as traditionally the IACtHR had focused on individual violations of human rights, without delving into the structural conditions that generate them (Abramovich, 2009).

The importance of this contextual and intersectional approach is reinforced by analyses from intellectuals such as Jacob Gorender and Abdias Nascimento. Gorender, in his work "O escravismo colonial," examines the economic and social roots of slavery in Brazil, showing its inextricable link to the colonial system and incipient capitalism (Gorender, 1978). Nascimento, in "O genocídio do negro brasileiro," analyzes how racism and discrimination against Afro-descendants in Brazil are a direct legacy of slavery, perpetuated through structural mechanisms of exclusion (Nascimento, 1978). The intersectional analysis of the context carried out by the IACtHR lays the foundations for a deeper understanding of state responsibility, which is not limited to specific omissions but encompasses historical patterns of discrimination and exclusion. This aligns with the notion of "due diligence" in human rights matters, implying that States must take positive measures to prevent, investigate, punish, and repair violations, even when committed by individuals (IACtHR, 2006, para. 172; Abramovich, 2010).

The contextual and intersectional approach adopted by the IACtHR has important implications for human rights theory and practice. Theoretically, it allows for overcoming an individualistic and fragmentary vision of rights, understanding them as interdependent and indivisible (Vázquez, 2016). Practically, it implies that States have reinforced obligations of prevention and protection against these violations when it comes to groups in situations of special vulnerability, requiring comprehensive public policies that address structural causes such as poverty, inequality, and discrimination (Abramovich, 2010). This is especially relevant in the Latin American context, where poverty and ethnic-racial discrimination are endemic problems at the root of many human rights violations (ECLAC, 2018; IACHR, 2011). The Fazenda Brazil Verde case offers an important precedent for addressing poverty



and discrimination from a human rights perspective, recognizing poverty as a form of discrimination prohibited by the American Convention on Human Rights (ACHR) and analyzing how it interacts with other factors such as ethnicity to generate situations of special vulnerability.

The IACtHR's judgment also has implications beyond the specific case. Establishing Brazil's international responsibility for perpetuating a structural situation of discrimination and exclusion, sets a precedent for similar cases in the region, contributing to the progressive development of standards in this area (Dulitzky, 2008; Ferrer Mac-Gregor, 2017). However, this jurisprudential development faces challenges, such as the IACtHR's limitations in following up on compliance with its judgments (Abramovich, 2009; Huneeus, 2011) and the constraints of addressing structural problems through individual case litigation (Cavallaro & Brewer, 2008).

Ultimately, the Fazenda Brazil Verde case invites us to rethink the role of law and human rights in the face of structural problems such as poverty and discrimination. It calls for a more contextual, intersectional, and transformative approach (Sousa Santos, 2014; Vázquez, 2016) that recognizes the collective, historical, and cultural dimensions of human rights and their emancipatory potential (Gallardo, 2006; Wolkmer, 2002). It reminds us that the struggle for human rights is inseparable from the struggle for social justice and that human rights are a means to build more just, inclusive, and democratic societies (Sousa Santos, 2014).

THE CREATION OF A VULNERABLE GROUP OF THE POOR

In the Fazenda Brazil Verde case, the Inter-American Court of Human Rights (IACtHR) takes a significant step by determining that the 85 workers subjected to forced labor and slavery in 2000 are part of a group characterized by extreme poverty. The Court notes that these workers shared certain characteristics, such as coming from the poorest regions of the country, with lower human development and employment prospects, and being illiterate or having little schooling (IACtHR, 2016, para. 339). These factors made them more susceptible to being recruited through false promises and deception.

The Court goes beyond recognizing the individual vulnerability of these workers and identifies them as part of a broader social group: people living in



extreme poverty in certain regions of Brazil. This group has historically suffered structural discrimination that places them in a position of disadvantage and risk (IACtHR, 2016, para. 340). As Judge Eduardo Ferrer Mac-Gregor explains, this judgment recognizes, for the first time in Inter-American jurisprudence, poverty as part of the discrimination based on economic position prohibited by Article 1.1 of the American Convention on Human Rights (ACHR) (Vote of Judge Ferrer Mac-Gregor, 2016, para. 2).

The creation of this new vulnerable group is significant because it allows an understanding of poverty from a human rights perspective (Dulitzky, 2008). It represents a paradigm shift, where poverty is understood as a condition that generates differentiated obligations for States under international human rights law. This recognition of poverty as a factor of discrimination is consistent with developments in international human rights law, as emphasized by the Committee on Economic, Social and Cultural Rights (CESCR) and the Special Rapporteur on Extreme Poverty and Human Rights (CESCR, 2001, para. 8; Sepúlveda, 2013, para. 4-5).

The IACtHR's judgment reinforces and expands this understanding of poverty as a human rights issue. By recognizing people living in poverty as a vulnerable group, the Court makes visible the structural barriers they face and the need to adopt specific measures to ensure their protection. Furthermore, the Court analyzes how poverty interacts with other factors such as ethnicity to generate situations of special vulnerability, as in the case of the mostly Afro-descendant workers at Fazenda Brazil Verde.

This intersectional analysis is fundamental to understanding the complexity of discrimination and how different systems of oppression reinforce each other (Crenshaw, 1991; Collins, 2000). It allows for a more comprehensive and contextualized approach to human rights violations, taking into account the specific realities of the most excluded groups and the structural barriers they face. This approach is particularly relevant in the Latin American context, where poverty and ethnic-racial discrimination are endemic problems that feed off each other (ECLAC, 2020, p. 19, 25; IACHR, 2011).

By recognizing poverty as a form of discrimination prohibited by the ACHR, the Court opens the door to the justiciability of economic, social, and cultural rights



(ESCR) from a substantive equality approach (Ferrer Mac-Gregor, 2017). This is especially relevant in a context where the judicialization of ESCR has faced resistance (Courtis, 2006).

The creation of a vulnerable group of the poor in the Fazenda Brazil Verde judgment marks a milestone in Inter-American jurisprudence and in addressing poverty from a human rights perspective. However, it is only a first step toward the eradication of poverty and the effective guarantee of human rights for the most excluded groups. It requires the political will of States, the strengthening of monitoring and compliance mechanisms, and the active participation of civil society (Abramovich, 2009; Huneeus, 2011). The Fazenda Brazil Verde judgment is a starting point for broader and sustained work in promoting and protecting the human rights of people and groups in situations of poverty and discrimination.

STRUCTURAL DISCRIMINATION AND STATE RESPONSIBILITY

By identifying the workers of Fazenda Brazil Verde as part of a vulnerable group that suffers structural discrimination due to their poverty, the Inter-American Court of Human Rights (IACtHR) lays the foundation for determining Brazil's international responsibility for human rights violations. The Court establishes that the State had knowledge of the existence of slave labor in the region since at least 1995 and, particularly, of the situation at Fazenda Brazil Verde based on several complaints and inspections (IACtHR, 2016, paras. 110-111). However, it did not adopt the necessary measures to prevent and eradicate these practices.

Beyond the specific omissions in this case, the Court considers that the State is responsible for perpetuating a situation of historical structural discrimination against the group of poor and Afro-descendant people to which the enslaved workers belonged. As the judgment points out, "poverty is the main factor of contemporary slavery in Brazil, as it increases the vulnerability of a significant part of the population, making them easy prey for recruiters for slave labor" (IACtHR, 2016, para. 340). The State has not adopted the necessary measures to combat poverty and the discrimination that facilitates it.

This reasoning is transcendent because it allows establishing a legal link between poverty, understood as structural discrimination, and state responsibility for human rights violations. It is no longer just that the State responds for its specific



actions or omissions, but for maintaining and perpetuating historical patterns of exclusion and inequality (Saba, 2012). The judgment contributes to developing the concept of material or structural equality in Inter-American jurisprudence (Ferrer Mac-Gregor, 2017). It recognizes that, in contexts of entrenched discrimination, the State must adopt special measures to transform these situations (Courtis, 2010). Failure to do so compromises its international responsibility.

This jurisprudential development is consistent with the evolution of the concept of discrimination in international human rights law. The Human Rights Committee (HRC) and the Committee on Economic, Social, and Cultural Rights (CESCR) have pointed out that discrimination encompasses discriminatory effects or results (HRC, 1989, para. 7; CESCR, 2009, para. 10) and that certain groups may face aggravated or multiple forms of discrimination due to the intersection of various factors (CESCR, 2009, para. 17). Faced with these situations, States must adopt special and concrete measures to eliminate these forms of discrimination (HRC, 1989, para. 10; CESCR, 2009, para. 36).

The Fazenda Brazil Verde case marks an important milestone by recognizing for the first time people living in poverty as a vulnerable group that suffers structural discrimination, and by establishing the State's responsibility for perpetuating that situation. This recognition has profound implications for the theory and practice of human rights in the region. It breaks with a formalistic vision of equality, to understand it as a substantive principle that requires taking into account the social realities of exclusion and disadvantage (Saba, 2007). Furthermore, by adopting an intersectional approach, the IACtHR recognizes the complexity of the dynamics of oppression and the need for comprehensive responses (Crenshaw, 1991; Gongóra, 2019).

This judgment has important consequences for the obligations of States. By establishing that poverty is a form of discrimination prohibited by the ACHR, the IACtHR opens the door to the justiciability of economic, social, and cultural rights (ESCR) from a substantive equality approach (Ferrer Mac-Gregor, 2017). States must adopt special measures to combat poverty and structural inequality. Furthermore, the Fazenda Brazil Verde judgment reinforces the idea that States have reinforced obligations towards groups in vulnerable situations, requiring specific and



priority policies to transform the structural conditions that generate and perpetuate exclusion (Abramovich, 2009).

Faced with the reality of poverty and inequality in Latin America (ECLAC, 2018), the Fazenda Brazil Verde judgment offers a valuable tool to make visible and combat the structural discrimination suffered by people and groups living in poverty. However, this jurisprudential development is not without challenges and limitations, such as the need for political will and sustained mobilization (Abramovich, 2009), the limitations of individual case litigation to transform complex social realities (Cavallaro & Brewer, 2008), and the risk of overloading justice systems and excessive judicialization of social policies.

CONCLUSION REMARKS

The judgment of the Inter-American Court of Human Rights (IACtHR) in the case of Workers of Fazenda Brazil Verde v. Brazil represents a milestone in inter-American jurisprudence on poverty, discrimination, forced labor, and modern slavery. The Court addresses the intersectionality between poverty and ethnicity as factors that generate a situation of special vulnerability and risk of human rights violations. The Court makes visible the historical patterns of structural discrimination against poor and Afro-descendant people in Brazil, which created the conditions for the persistence of practices such as slave labor.

The creation of this new vulnerable group of the poor allows for addressing poverty from a human rights perspective. Poverty is no longer just an economic condition but a factor of discrimination prohibited by the American Convention on Human Rights (ACHR) that places certain groups in a position of disadvantage and risk. States have reinforced obligations of protection and guarantee. The Court considers that Brazil is responsible for perpetuating a situation of historical structural discrimination, implying that States must adopt comprehensive measures to combat the underlying causes of poverty and discrimination.

This judgment opens new doors to address forced labor and modern slavery from an intersectional perspective, taking into account how different factors of discrimination intertwine to generate situations of extreme vulnerability. It lays the foundation for the development of more demanding standards on state obligations towards these vulnerable groups. Poverty can no longer be seen as a mere factual



situation but as a condition that generates differentiated obligations for States in terms of human rights. Structural discrimination must be actively combated through comprehensive public policies.

The Court's contextual analysis makes visible how structural discrimination creates conditions for the persistence of practices such as forced labor and slavery. By recognizing people living in poverty as a vulnerable group that suffers structural discrimination, the Court opens the door to addressing poverty as a human rights issue, not just an economic one. States have reinforced obligations to protect and guarantee the rights of these groups. The intersectional approach adopted by the Court offers a valuable tool for understanding and addressing the complex dynamics of discrimination that underlie serious human rights violations.

The creation of a vulnerable group of the poor in the Court's jurisprudence is a significant step towards the juridification of the relationship between poverty and human rights. It represents a paradigm shift, where poverty is no longer seen as a mere factual situation but as a condition that generates differentiated obligations for States under international human rights law. However, this jurisprudential advance is only a first step on a longer path toward the eradication of poverty and the effective guarantee of human rights for the most excluded groups. For this recognition to translate into real changes, it requires the political will of States, the strengthening of mechanisms for monitoring and compliance with judgments, and the active participation of civil society.



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