

## **Workers' rights violated by the practice of slave-like labor: Challenges and legal consequences**

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### **ABSTRACT**

Despite the enactment of the Lei Áurea (Golden Law) on May 13, 1888, which abolished slavery in Brazil, practices of labor analogous to slavery have been illegally maintained by individuals and legal entities in urban and rural areas. The focus of this article is to address the forms of combat that are being applied and their respective consequences. We will discuss laws and decrees, eradication programs, inspection measures, sanctions applied, and recent case law, examining the consequences for individuals and companies involved in this practice.

**Keywords:** Slavery. Labor Law. Imprisonment. Freedom. Labor Inspector.

### **INTRODUCTION**

The general objective of this article is to demonstrate the historical journey of slave labor up to the current context, analyzing the main projects that aim to eradicate it, instituted by the ILO, MTE, Government and current case law decisions. In view of this, the specific objectives are to consolidate that slave labor can be combated if it has government support and commitment from companies, with inspections and programs focused on this issue, and also to verify which sanctions and legal decisions are being applied to these individuals and/or legal entities, who subject their employers to these conditions and what opportunities are given to them.

Therefore, the analysis of the topic of labor analogous to slavery is based on a social issue, because despite being a well-known subject, Brazil has many people in situations of great poverty, without access to education and better jobs, where they are most often victims of this crime.

The bibliographic research chosen was basic, exploratory objective, research results, and demonstration of case law. This study was developed based on an extensive review of specialized literature on the subject. To this end, relevant books, articles, and online sources

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were consulted. The research material was selected through systematic research in libraries and search engines, such as Google, using the following descriptors: slavery; labor law; imprisonment; freedom; labor inspector, 2030 agenda, decent work.

The analysis of the collected data occurred through a predominantly qualitative approach, to deepen the understanding of the research topic in light of the theoretical information available.

The work was initially developed by addressing constitutional guarantees, also commenting on the influence of decrees and human rights on workers in general, and exploring the concept of workers' rights.

Afterward, there is a correlation between ancient and contemporary slave labor. To better visualize this analysis, the mechanisms that are currently being used to combat it are also discussed, such as programs and awareness-raising programs for companies, developed by the government, ILO, and other institutions. However, is the action of government agencies and society in combating slave-like labor sufficient or does it need to be improved? The answer will be addressed throughout the article.

In the end, it addresses how rural and urban employers are condemned, the measures that are being developed and achieved, and their effective monitoring, and demonstrates current legal issues and decisions, leading to the question of whether current sanctions and judicial decisions are sufficient to reduce the rate of employers subjecting their workers to conditions analogous to slavery.

## **CONSTITUTIONAL GUARANTEES FOR WORKERS**

The rules that ensure social rights that encompass workers' rights are always of public order and inviolable, thus all workers have their rights duly listed in the Constitutions.

Uadi Lammêngo in his work demonstrates how labor rights were constitutionalized in the world:

“It came from the Declaration of the Rights of Man and the Citizen of 1789, with a strong influence on the doctrine of the social contract (Jean-Jacques Rousseau). It found expression in the French Charter of 1848 (art. 2, no. 13), in the Communist Manifesto (1848), and the Encyclical Letter *Rerum Novarum*, by Leo VIII (1891, ideological documents of notorious influence and importance. But it was in the 20th century that it gained strength, with the advent of the constitutions of Mexico (1971), the former Soviet Union (1918) and Weimar Germany (1919) [...]”

With the institution of the 1988 constitution, which is in force to this day, there was a



great revolution within social rights, which closed down bodies that were representing workers, but established principles and better conditions for workers, as Mauricio Godinho states “[...] it established basic principles for the legal order, the State and society – a large part of these principles elevating work to the pinnacle, just like the matrix of post-war Europe”, bringing more legal security to the population.

It can also be seen that Godinho explains the institution of the CF/88 regarding labor law:

“[...] The Constitution of the Republic established in Brazil the normative concept and structure of the Democratic State of Law, in which the human person and his/her dignity occupy cardinal positions, together with the valorization of work, especially employment, which inserts the labor justice branch in the legal heart and mind that define the best spirit of the Constitution [...]

As was already expected, the Magna Carta lists in its articles the institution of the social dignity of work in conditions analogous to slavery and its art.1<sup>o</sup> provides for the dignity of the person the human right that is one of the fundamental principles:

“[...] Art. 1. The Federative Republic of Brazil, formed by the indissoluble union of the States and Municipalities and the Federal District, constitutes a Democratic State of Law and has as its foundations:  
[...]III – the dignity of the human person; IV – the social values of work and free enterprise [...]

In art. 5, lists the right to freedom, and equality of people, which thus becomes one of the most extensive in the code:

“[...] Art. 5. All are equal before the law, without distinction of any nature, guaranteeing Brazilians and foreigners residing in the country the inviolability of the right to life, liberty, equality, security, and property, under the following terms: [...]III – no one shall be subjected to torture or inhuman or degrading treatment; [...]XXIII – property shall fulfill its social function [...]

Art. 170 provides for the freedom of the worker and that his/her dignity must be respected:

“[...] Art. 170. The economic order, founded on the valorization of human labor and free initiative, aims to ensure a dignified existence for all, by the dictates of social justice, observing the following principles: [...] III – a social function of property; [...] VII – reduction of regional and social inequalities [...]

In art. 186, the concept of social function and its relationship with labor law, which must be accepted even in rural or urban areas by the requirements established by law, is addressed:

[...] Art. 186. The social function is fulfilled when rural property simultaneously meets, according to criteria and levels of demand established by law, the following requirements:

[...] III – observance of the provisions that regulate labor relations; IV – Operation that favors the well-being of owners and workers [...].

As can be seen, workers' rights are listed in social rights, where subordinate employees



due to having an employment relationship or being service providers are supervised by individuals or legal entities, and protected by social rights. Nascimento apud Godinho defines subordination as “a basic idea of submission, subjection to the power of others, to the orders of third parties, a position of dependence”.

Even so, there are specific rights for rural workers, who, due to having less access and greater difficulty in obtaining their rights, have specific guarantees in the Federal Constitution, as provided in art. 7º CF/88 “These are the rights of urban and rural workers, in addition to others that aim to improve their social condition”. In this article, there are 34 clauses provided for these rights for workers, and all social rights listed for workers in general are also applicable.

Art. 8º CF/88, which provides for freedom of association, without obliging workers to form associations and the lack of need for unions to depend on the state for deliberations, is also possible to see art. 9º which brings the concept of strike and the rights that workers have about this topic.

In addition, the constitutional guarantees that are favorable to workers occur with the existence of standards defined in Human Rights Conventions, which stand out and have greater prevalence in their decisions.

## HUMAN RIGHTS FROM THE WORKER'S PERSPECTIVE

*With Human Rights, we can analyze the Declaration of the Rights of Man and of the Citizen (French Declaration) of 1789, which is considered the birth of the first generation in terms of civil rights, marking a major step forward in the limits of workers. In this declaration, it was determined that work is optional for men, thus, the employment contract appears so that their rights are fulfilled, emerging as an obstacle to the phase of servitude.*

*The principle of Human Dignity has a universal value in labor law to prevent inhumane work and is also invoked to give scope to the right to honor, which grants its holder protection against humiliating and despicable treatment. According to Alice Monteiro, human dignity constitutes the intangible core of the right to honor, the concept of which depends on facts, ideas, and values that are present in a society at a given historical moment.*

In 1948, the Universal Declaration of Human Rights (UDHR) was published, which addressed collective rights, defining the human person, as Maria Áurea Baroni Cecato, addressing third-generation rights, can state that:

“Third-generation rights – collective and solidarity – also include workers, both because they consider the indispensability of a healthy work environment and because they expand collective rights, but, above all, because they define the human person as the



central subject of development. In fact, from the text of the 1986 UN Declaration, it can be inferred that social and labor inclusion is an essential component of development [...]"

This declaration also addressed the right to work, fair conditions, and protection against unemployment. Subsequently, the American Convention on Human Rights (Pact of San José de Costa Rica) of 1969 was created, which was ratified by Brazil in 1992, and defined in its art. 6th prohibition of slavery and servitude:

"1. No one shall be subjected to slavery or servitude, and both these and the slave trade and the trafficking of women are prohibited in all their forms. 2. No one shall be forced to perform forced or compulsory labor. In countries where, for certain crimes, a custodial sentence accompanied by forced labor is prescribed, this provision cannot be interpreted as prohibiting the fulfillment of said sentence, imposed by a competent judge or court. Forced labor must not affect the dignity or the physical and intellectual capacity of the prisoner [...]"

Therefore, immediately after this convention was ratified, there was a greater obligation to attempt to reduce forced labor, and thus, starting to act on these, the Treaties were created, which are endowed with greater supremacy over the laws of this country. When we talk about Human Rights, we talk about International Treaties and Conventions, International Pacts fit as Constitutional Amendments, for example, we have Constitutional Amendment No. 45, of 2004, which cannot be rejected or have contrary decisions, as provided for in art. 3rd and 5th §2:

"§ 3rd International treaties and conventions on human rights that are approved in each House of the National Congress, in two rounds, by three-fifths of the votes of their respective members, will be equivalent to constitutional amendments.

[...] Art. 5º All are equal before the law, without distinction of any nature, guaranteeing Brazilians and foreign residents in the country the inviolability of the right to life, liberty, equality, security and property, under the following terms: [...] § 2º - The rights and guarantees expressed in this Constitution do not exclude others arising from the regime and principles adopted by it, or from international treaties to which the Federative Republic of Brazil is a party.

Furthermore, it can be seen that the dignity of the human person is listed in the 1988 Constitution as one of the fundamental rights:

Art. 1º The Federative Republic of Brazil, formed by the indissoluble union of the States and Municipalities and the Federal District, constitutes a Democratic State of Law and is based on:

[...] III - the dignity of the human person;



Within the institutions of human rights and the articles defined in the Constitution, it can be imagined that the rights of workers are protected when applying and creating new laws.

## **LABOR RIGHTS**

Law is established through legislation and rules to ensure that order and justice are established in the country. Its primary function is to ensure the protection and guarantees of people's fundamental rights, so that social rights are always applied to protect them, especially for the most vulnerable people and those most susceptible to injustice, promoting a more just and cohesive society.

As Arnaldo Susskind states in his work, "Labor law is a product of the reaction seen in the 19th century against the exploitation of employees by employers", protection in Brazilian legislation is always essential for workers, thus trying to ensure that the most favorable law is always applied to them.

Workers' guarantees aim to prevent harmful practices in the workplace, so that harmful attitudes do not occur in their jobs and that labor practices are by the standards of human dignity. Article 468 "caput" of the Consolidation of Labor Laws addresses the protection of workers by prohibiting unilateral changes to employment contracts, as follows:

"[...] Article 468 - In individual employment contracts, changes to the respective conditions are only permitted by mutual consent, and even then, provided that they do not result, directly or indirectly, in harm to the employee, under penalty of nullity of the clause that violates this guarantee [...]"

Therefore, confirming the Magna Carta, which states in Article 5, XXXVI, that the law will not harm acquired rights, perfect legal acts, and res judicata.

The CLT, in its Chapter V, addresses the regulation of the work environment, the duties of companies for the safety and well-being of employees, as well as the inspection of labor departments that must be carried out periodically in companies to ensure due compliance with these standards, guaranteeing health and safety.

Article 468 9 of the CLT is fundamental and encompasses all the rules contained in this legislation, which states that: "[...] Art. 9 - Acts performed to distort, prevent or defrauding the application of the precepts contained in this Consolidation shall be null and void [...]"

In this way, it ensures that employment contracts are fairer and free from fraud, and offers legal security with effective measures against companies that exploit workers and keep them in degrading situations. In this way, it combats companies that are on the blacklist, which have tried in every way to disguise their situation before society and are treating their employers



in the worst possible way.

Several articles of the CLT are considered for inspection by the Labor Tax Auditor, as we can see in art. 41 combined with art. 47, about keeping employees without registration, also considers art. 157, I CLT, which provides for occupational health and safety, and art. 168, I CLT, which requires that workers undergo a medical examination upon admission, among other violations.

Art. 66 of the CLT provides for a rest period of 11 consecutive hours between two shifts, and art. 67 of the CLT addresses a weekly rest period of 24 consecutive hours. There is also art. 71 and its clauses that address breaks. These cannot be violated either and are used as a basis for inspections, where workers work exhausting hours without any monitoring.

For inspections, it is clear that violations of the CLT are addressed, as well as law 5,889/1973, which provides for rural work, and Regulatory Standards, such as NR 31.

NR 31 is commonly known as the NR for slave labor, as it provides for the health and safety of rural workers, who must ensure places to rest (decent accommodation with hygiene and comfort), adequate sanitary facilities, first aid supplies, and, when there are more than 10 employees, a person trained for this purpose must also be provided, as well as a place to store and preserve food.

This NR also includes activities that involve serious and imminent risk to life and health, and these activities must be interrupted and only resumed when appropriate measures are taken, and a CIPA must be established. It also provides for the use of PPE, which is established in NR 06.

We can see that Brazilian legislation guarantees protections for workers for decent work, with significant changes that have been implemented to combat degrading work. However, there are still many challenges to be overcome, such as more intensive monitoring and raising awareness among the entire population regarding this issue, which is not outdated but has gained new nuances, as we will see in the next topic.

## **DIFFERENCE BETWEEN ANCIENT AND CONTEMPORARY SLAVERY**

Slavery has existed in Brazil since 1500. Rafael de Bivar Marquese, in his article, addresses the history of slaves. He states that the Indians were initially exploited to serve as “employees” of the Portuguese. In exchange, they received objects that were still unknown to them and were considered profitable labor. However, over time, epidemics and revolts occurred, and the Catholic Church became interested in catechizing them. As a result, the capture of Indians was prohibited, bringing the end of Indigenous slavery to a close, as stated by Luiz



Koshiba and Denise Manzi F. Pereira:

“[...] although the Indian was an important element in the formation of the colony, the blacks soon supplanted him, and his labor was considered the main basis on which Brazilian colonial society developed. In the initial phase of sugarcane farming, indigenous slave labor still predominated. It seems to us then that arguments so widely used, such as the Brazilian Indians' inability to work in agriculture and their indolence, fall by the wayside [...]”

In the mid-16th century, with a lot of land to be explored, attention turned to the colonies in Africa, so the slave trade was the main means of bringing African slaves to Brazil, as can be seen in the work of Luiz Koshiba and Denise Manzi F. Pereira.

According to Katia Mattoso, after arriving in Brazil, they were sold as objects and forced to work in degrading conditions, exhausting hours of work, without any burden, and a decent place to live. The slaves were treated like animals, branded like cattle, and belonged to the people. The abolitionist movement began in 1831, when the Diogo Feijó Law was instituted, determining that black people who had come from abroad could not be enslaved, as established in its art.1º of this law, with the following content: “All slaves who enter the territory or ports of Brazil, coming from abroad, remain free”.

The prohibition of slave trafficking occurred to preserve the image of a more sovereign nation, with the Eusébio de Queirós Law in 1850.

The Lei do Ventre Livre (Free Womb Law) No. 2,040, enacted in 1871, granted freedom to children born to slave mothers, but the Lei Áurea (Golden Law) was instituted before any of these slaves born after the Lei do Ventre Livre had turned 21. At this time, laws were passed that emancipated slaves or abolished their conditions, such as the law for sexagenarians, which meant that slaves over the age of 60 were to be freed.

With the signing of the Lei Áurea (No. 3,353) on May 13, 1888, it was determined that slavery would be abolished from that moment on, as seen in its art. 1, “Slavery in Brazil is declared abolished (sic) from the date of this Law.”

The 1926 United Nations Slavery Convention, amended by the 1953 Protocol and the 1956 Supplementary Convention on the Abolition of Slavery (Enacted in Brazil by Presidential Decree No. 58,563 of June 1, 1966), established the commitment of its signatories to completely abolish slavery in all its forms. Thus, the practice of slavery was prohibited, bringing hope of freedom for all. However, although abolition occurred, the reality reserved an uncertain future for those freed, without any protection or assistance, they were not given the necessary opportunities for reintegration into society, and many were forced to accept precarious, poorly paid jobs without due recognition. Thus, without any preparation for the job market, it resulted in





a cycle of invisibility, with poverty and inequality, a true social exclusion that is largely perpetuated to this day by structural racism. Currently, people who are subjected to precarious work are referred to as slave-like labor, which is seen with high incidence in rural areas, and continues on many farms, but is also found in urban areas of large cities, among poor Brazilians, the vast majority of whom are black, and often without education. There are also cases of foreigners, who are looking for a better quality of life.

There are also cases of women who are subjected to domestic slave labor, who are generally from a lower social class, from small towns, black, who work in family homes from childhood and grow up in this home, always as “employees” and without pay, registration in the CTPS or payment of other charges, having all their rights taken away. Inspection is being intensified every day due to the increase in complaints, and thus the cases tend to increase.

The majority of these people are still black, because despite Public Policies being implemented to change this scenario, there is still a great racial inequality, and inclusion is happening slowly, as Florestan Fernandes states:

“Although ‘individuals of color’ still participate (in some regions in apparently considerable proportions) in the “achievements of progress”, it cannot be objectively stated that they collectively share the currents of vertical social mobility linked to the structure, functionalism, and development of class society.”

Work analogous to slavery violates the Universal Declaration of Human Rights, the ILO Declaration of Fundamental Rights at Work, and the Guidelines for Multinational Enterprises of the Organization for Economic Cooperation and Development (OECD), CF/88, Regulatory Standards, and CLT.

According to the ILO, people referred to as “cats” are intermediaries for employers, enticing individuals in vulnerable situations with false promises of jobs, excellent salaries, and housing, thus appearing to be a perfect job, but which turns out to be a huge trap. People who are enticed, after arriving at the workplace, are forced to buy tools and equipment and realize that the cost of the instruments they need for the job is high, and so the debt begins, being written down in a notebook for this purpose.

Although the forms of exploitation have changed, the purpose of slave labor continues; the sale and purchase of people has given way to an illusory employment proposal that traps workers in degrading situations, with exhausting work hours, suppression of salaries or ridiculous amounts, homelessness or precarious housing, restricted movement and large debts with their employers, thus violating several rights.



## WAYS TO COMBAT LABOR SIMILAR TO SLAVERY

The eradication of slave labor became a national priority, becoming a matter of state, after the Brazilian government was warned that there were still high rates of slave labor in the country, due to complaints from the Pastoral Land Commission. The Pastoral Land Commission (CPT) is a movement formed by members of the Catholic Church, which investigates and denounces the atrocities committed against workers, acting before the Brazilian authorities to demand measures to resolve the issue of labor analogous to slavery, as commented by José Ribeiro and Joanine Berg in their article “[...] denouncing the existence of slave labor since the 1970s, it continues to provide fundamental services by forwarding complaints to the MTE and by providing services to rescued workers”. Among these and other attempts to combat it is the Decent Work Program, which was established by the ILO, together with the Ministry of Labor and Employment (MTE), and aims to guarantee improvements in the labor market, in social dialogue, as well as in equal labor opportunities and their protection. Decent work is work that is remunerated within the law, with freedom and security, where workers' rights are duly respected. In 2006, the National Agenda for Decent Work (ANTD) was publicly launched, which includes programs such as advanced training courses, job creation, eradication of slave labor, improvements in workplace conditions, conferences, and lectures in each state of the country.

In 2023, Brazil announced the South-South Cooperation Program until 2027, supporting decent work in Latin America, Africa, and Asia-Pacific. There are four axes to be explored, one of which is forced labor. It is cooperation from all sides, and in Geneva, Switzerland, the “Social Justice for the Global South” program was presented, for global social justice. In addition, some states have created their decent work agenda, such as Bahia, where FUNTRAD was founded, created by State Law No. 12,356/2011. It is a Fund to finance actions to achieve decent work. There is the Bahia Decent Work Agenda, which promotes groups to hold debates and implement actions to combat degrading work.

The Public Ministry of Labor, together with the ILO, as part of the Smartlab initiative for decent work, created the slave observatory, which periodically updates data on slave labor in the country. It shows that from 1995 to 2023, 63,516 workers were rescued from situations analogous to slavery.

In 2014, Constitutional Amendment 81/2014 was created, which changed art. 243 of the Federal Constitution/88, and now has the following wording:

“[...]Art. 243. Rural and urban properties in any region of the country where illegal crops of psychotropic plants or exploitation of slave labor are located in accordance with the law will be expropriated and allocated to agrarian reform and popular housing programs,



without any compensation to the owner and without prejudice to other sanctions provided for by law, observing, where applicable, the provisions of art. 5. Sole paragraph. Any and all assets of economic value seized as a result of illicit trafficking in narcotics and similar drugs and the exploitation of slave labor will be confiscated and will revert to a special fund with a specific destination, in accordance with the law [...]"

According to the new wording, the companies and products seized will be duly confiscated with a specific destination and this measure will not depend on having been carried out in the criminal sphere. In 2021, Ordinance/MTP 671 was created, which brought several changes in favor of workers and in the fight against slave-like labor, with a chapter dedicated to this subject, defining work in conditions analogous to slavery as:

“Art. 207. The worker subjected, individually or jointly, to:  
 I - forced labor;  
 II - exhaustive workday;  
 III - degrading work conditions;  
 IV - restriction, by any means, of movement due to debt contracted with the employer or agent, at the time of hiring or during the course of the employment contract; or  
 V - retention in the workplace due to:  
 a) restriction of the use of any means of transportation;  
 b) maintenance of overt surveillance; or  
 c) seizure of documents or personal objects.  
 Sole paragraph. Work carried out in conditions analogous to slavery, in all its forms, constitutes an attack on fundamental human rights and the dignity of the worker and it is the duty of the Labor Inspector to combat its practice.”

In this way, expanding the conditions in which forced labor is characterized and taking measures against companies that are part of the dirty list, which is updated periodically, and expanding the concepts that Labor Inspectors must use in their actions, defining this:

**Table 1:** Inspection by Labor Auditors

<b>Formalized Workers during the Fiscal Action</b>	<b>Inspected Establishments</b>	<b>Unemployment Insurance Guides Issued</b>	<b>Compensation Received by Workers</b>
54,783	7,323	43,479	148,628,505.54

Source: SIT

With the rates shown on this website, it is possible to verify a major problem, which is still far from over. In 2023 alone, almost 2,000 workers were rescued and the need for these inspections, which are so necessary to try to prevent actions and ensure that rights will no longer be violated, is evident. It is possible to believe that in the coming years these approaches will be multiplied, due to the new AFT competition that will take place at the end of 2024. In this competition, there is an estimate of 900 (nine hundred) to 1,800 (one thousand and eight hundred) new employees who will start their activities in 2025.



## ACTIONS THAT COMPANIES CAN TAKE TO COMBAT LABOR ARISING FROM SLAVERY

Companies need to take a set of precautions to prevent and combat labor analogous to slavery. Companies must implement stricter measures, including indirectly, such as in the supply chain and outsourced companies. At this stage, we can see that several internal practices can currently be adopted, as will be detailed below.

In 2005, the ILO formulated the National Pact to Combat Slave Labor. Through this initiative, companies that engage in this practice are subject to restrictions in the commercial market, making it impossible for them to obtain any type of financing. In 2013, the National Institute for the Eradication of Slave Labor (InPACTO) was created, resulting from the pact, with the objective of achieving the 10 central commitments for eradication, monitoring compliance with the commitments assumed by signatory companies and entities.

This institute has supporters ranging from the ILO to large Brazilian companies such as Vale, Nestlé, Ambev, Carrefour, etc. Companies that join and sign the pact assume commitments to combat slave labor. Furthermore, we found that the MTE adopted the Sustainable Work project, based on ESG (Environmental, Social and Governance), established by the ILO, with Responsible Business Conduct and several actions, such as dialogue, awareness and provision of tools for companies.

Companies can also join the UN Global Compact, which has several agendas and initiatives aimed at more sustainable work, aligned with the Sustainable Development Goals (SDGs), including achieving full employment with decent work, among which SDG 8, which has among its sub-goals, 8.7 addresses the fight against modern slavery and 8.8 addresses the protection of labor rights, the agenda can also be joined by companies. Furthermore, a self-diagnosis tool was launched, which offers companies the opportunity to evaluate their conduct in relation to the principles of corporate responsibility in a voluntary and confidential manner. In this tool, it is possible to select the segment and size, and the information provided is not used to the detriment of the companies.

Thus, with the use of the self-diagnosis, in the phase of filling out the form, it is possible to verify that for each alternative selected, an opinion appears on that subject and possible improvements that the companies can make. At the end, a graph of each situation, a report and an improvement plan are generated for use by the companies.

In addition to the tool mentioned above, a platform was launched to develop a Risk Management Program and issue a declaration of non-existence, on GOV.BR, for Microenterprises, Small Enterprises, and rural companies with up to 50 employees.

Reinforcing the beginning of this topic, it is important to highlight Due Diligence, this tool



allows companies to thoroughly evaluate the supply chain, outsourced companies and partners, making it possible to identify financial risks, in addition to the certificates issued by the Labor Secretariat (SIT), and to consult the history of companies, in addition to the blacklist of the Ministry of Labor and Employment (MTE), which is essential to prevent future problems.

According to CUT, only 27% of companies are analyzing the risk or intend to do so in the next year, of labor analogous to slavery. The data presented reinforce the need for companies to intensify their efforts to comply with compliance standards. Conducting regular audits, mapping the production chain in detail and adopting concrete measures to ensure decent working conditions are essential to guarantee legal compliance and the social responsibility of organizations.

In view of the above, the Government's commitment and dedication to ensuring that companies work in compliance and to eradicate labor analogous to slavery is evident. Encouraging the implementation of compliance in companies, to generate codes of conduct, reporting channels and regular audits, demonstrates the search for effective solutions. These measures, combined with rigorous monitoring and awareness in society, can indeed contribute to finally making a significant reduction possible. tion and even the eradication of degrading work.

## **SANCTIONS FOR THE EMPLOYER AND THE COMPETENCE TO JUDGE**

As discussed in this article, there is a great effort by entities, governments, etc., to eradicate work in precarious conditions. In this sense, there are and need to be necessary sanctions to punish and prevent companies from practicing this illicit act.

The ILO lists in art. 2, item 1, of Convention No. 29, the provision that determines the cases in which work is equivalent to slavery, and addresses sanctions for the employer, as we can see:

“For the purposes of this Convention, the term “forced or compulsory labor” shall mean all work or service exacted from an individual under threat of any punishment and for which the individual has not offered himself/herself willingly.

Paragraph 1 includes the equivalent types and provides for punishment identical to that in the caput for anyone who:

- a) restricts the use of any means of transportation by the worker, with the purpose of keeping him/her at the workplace;
- b) maintains overt surveillance at the workplace, with the purpose of keeping the worker there;
- c) seizes documents or personal objects of the worker, with the purpose of keeping him/her at the workplace.



The qualified types (or special grounds for increasing the penalty) of the crime are listed in paragraph 2:

- a) against a child or adolescent;
- b) for reasons of prejudice based on race, color, ethnicity, religion or origin.

Finally, we understand that the criminal action is public and unconditional. (author's emphasis) [...]"

In the Penal Code, there are several articles that are used in these cases, such as art.148 which refers to the crime of kidnapping and false imprisonment, for it to be configured it is required that the retention or detention of the individual does not arise from legal permission or is not tolerated by the social environment, it is a crime against individual freedom, being configured by retention in the workplace. Immediately after, there is art.149 which provides for the reduction to a condition analogous to slavery:

"Art. 149 – Reducing someone to a condition analogous to slavery, whether by subjecting them to forced labor or an exhaustive workday, or by subjecting them to degrading working conditions, or by restricting, by any means, their movement due to a debt contracted with the employer or agent:

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

§ 1º - The same penalties apply to anyone who:

I – restricts the use of any means of transportation by the worker, with the purpose of keeping him or her at the workplace;

II – maintains overt surveillance at the workplace or seizes documents or personal objects of the worker, with the purpose of keeping him or her at the workplace.

§ 2º - The penalty is increased by half, if the crime is committed:

I – against a child or adolescent;

II – due to prejudice based on race, color, ethnicity, religion or origin"

This article stands out for addressing the fact that restriction of freedom is one of the essential elements for characterizing reduction to a condition analogous to slavery. In addition, the wording of the Criminal Code also includes art. 207, which delves into the issue of enticement of workers and its penalties, defining the forms:

"Art. 207 - Enticing workers, with the purpose of taking them from one location to another within the national territory:

Penalty - imprisonment of one to three years, and a fine.

§ 1º The same penalty is applicable to anyone who recruits workers outside the location where the work is performed, within the national territory, through fraud or charging any amount from the worker, or, furthermore, does not ensure conditions for their return to their place of origin.

§ 2º The penalty is increased by one sixth to one third if the victim is under eighteen years of age, elderly, pregnant, indigenous or has a physical or mental disability."

In addition to the legal provisions in the criminal sphere, a reporting channel was created



in 2020 with a system called Ipê, and thanks to the reports, it was found that the activities with the highest number of violations are: charcoal production, cattle raising, planted forests, native forests, coffee cultivation and mineral extraction, and civil construction.

On October 7, 2024, the last update of the registry of employers who have subjected workers to slave labor, known as the “Dirty List” prepared by the MTE, included 176 employers, totaling 716 offending companies — not counting cases of exclusion due to a court decision —, including individuals and legal entities, located in 17 units of the Federation of the five major regions of the country, with public financing prohibited for people who are administratively convicted. Each employer will be published on this list for a period of 02 (two) years, in accordance with art. 3 of the Interministerial Ordinance.

On October 7, 2024, a new Interministerial Ordinance was created, and regulates the registration of employees, who may sign a conduct adjustment term or judicial agreement with the Union, which will be formalized through an administrative process and after conciliation, the Coordination of Social Dialogue and Promotion of Decent Work will send the Legal Consultancy, to present consultancy for the celebration of the TAC or judicial approval that will have several commitments already established to be followed, as listed in the ordinance, one of the main commitments is compensation for moral damages, which will be at least R\$25,000.00 (twenty-five thousand reais), and an increase of R\$2,500.00 (two thousand and five hundred reais), for each year that the worker was subjected to conditions analogous to slavery. The employer who makes the agreement or TAC will no longer be included in the registry of employers who subjected workers to conditions analogous to slavery, but will remain for 02 (two) years on the list of employers who signed the Conduct Term, but in the event of non-compliance, the employer will return to the blacklist for another 02 years.

Regarding the jurisdiction to judge these employers, the STF determines that when it is a case of harming organizations or affecting the collective of workers subject to slave labor, jurisdiction will lie with the Federal Court, according to case law.:

“CRIMINAL PROCEDURAL LAW. EXTRAORDINARY APPEAL. JURISDICTION OF THE FEDERAL COURT. CRIMES OF REDUCTION TO CONDITIONS ANALOGOUS TO SLAVERY, EXPOSURE OF THE LIFE AND HEALTH OF THESE WORKERS TO DANGER, FRUSTRATION OF LABOR RIGHTS AND OMISSION OF DATA IN THE WORK AND SOCIAL SECURITY CARD. ALLEGED RELATED CRIMES. APPEAL PARTIALLY ADMITTED AND, IN THIS PART, GRANTED. 1. The extraordinary appeal filed by the Federal Public Prosecutor's Office covers the issue of the jurisdiction of the federal courts for crimes of reducing workers to conditions analogous to slavery, exposing the lives and health of said workers to danger, frustrating their labor rights and omitting data from their work and social security cards, and other allegedly related crimes. 2. Regarding the admissibility requirements of the extraordinary appeal, in the part referring to the alleged jurisdiction of the federal courts to hear and judge crimes allegedly related to offenses of interest to the Union, as well as the crime against Social Security (PC, art.



337-A), the issues raised by the appellant would require an examination of the infra-constitutional regulations (CPP, arts. 76, 78 and 79; PC, art. 337-A). 3. Therefore, there is no possibility of hearing part of the extraordinary appeal filed due to the infra-constitutional nature of the issues. 4. The appealed decision upheld the decision of the federal judge who declared the federal courts incompetent to prosecute and judge the crime of reduction to a condition analogous to slavery, the crime of frustration of rights guaranteed by labor law, the crime of omission of data from the Employment and Social Security Card and the crime of exposing the life and health of workers to danger. In this case, it was understood that these were not crimes against the organization of work, but against specific workers, which does not attract the jurisdiction of the federal courts. 5. The Plenary of the Supreme Federal Court, in the judgment of RE 398,041 (rel. Min. Joaquim Barbosa, session of 11/30/2006), established the jurisdiction of the federal courts to judge crimes of reduction to conditions analogous to slavery, understanding that "any conduct that violates not only the system of agencies and institutions that collectively preserve the rights and duties of workers, but also the working man, affecting him in the spheres in which the Constitution grants him maximum protection, falls into the category of crimes against the organization of work, if committed in the context of labor relations" (Newsletter no. 450). 6. The conduct attributed to the defendants, in theory, violates legal rights that go beyond the limits of individual freedom and the health of workers reduced to conditions analogous to slavery, violating the principle of human dignity and freedom of labor. Among the precedents in this sense, I refer to RE 480.138/RR, rel. Min. Gilmar Mendes, DJ 04/24/2008; RE 508.717/PA, rel. Min. Cármen Lúcia, DJ 04/11/2007. 7. Extraordinary appeal partially accepted."<sup>3</sup>

Esta decisão abre precedentes para as demais, mas ainda é um ponto com muitas divergências na questão penal.

Em casos de trabalho escravo em âmbito doméstico, a jurisprudência dominante indica que competência será da justiça estadual, conforme pode-se verificar:

"REDUCTION TO A CONDITION ANALOGOUS TO SLAVERY. COMPETENCE. RESTRICTION OF DEFENSE. 1 - The State Court has jurisdiction to prosecute and judge the crime of reduction to a condition analogous to slavery, committed in the domestic sphere, when there is no direct offense to the organization of work. 2 - If the defendant, summoned more than one month in advance of the date of the hearing for questioning, fails to appear and does not justify her absence, it is possible to declare her in default without this constituting a restriction of defense. 3 - The employer who, for more than 20 years, subjects a domestic employee to an exhaustive workday and degrading working conditions, including physical aggression, such as pulling ears and hair, commits the crime of reduction to a condition analogous to slavery. 4 - To characterize the crime of reduction to a condition analogous to slavery, it is not necessary to restrict the worker's freedom of movement; it is sufficient to limit the worker's ability to self-determine. 5 - Appeal dismissed."<sup>4</sup>

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<sup>3</sup> SUPERIOR TRIBUNAL FEDERAL. RE 541627. Relator: Min. ELLEN GRACIE. Brasília, DF, 14 de outubro de 2008. Ement Vol-02342-12 Pp-02386 RTJ vol-00208-02 PP-00853 RIOBTP v. 20, n. 237, 2009, p. 132-139) Brasília, 21 nov. 2008. Disponível em <<http://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=AC&docID=563991>>. Acesso em 27 maio 2024.

<sup>4</sup> TRIBUNAL DE JUSTIÇA DO DISTRITO FEDERAL. 20150110087592 0001558-65.2015.8.07.0016 Relator: JAIR SOARES, Data de Julgamento: 25/05/2017, 2ª TURMA CRIMINAL, Data de Publicação: Publicado no DJE: 30/05/2017. Pág.: 199/215. Disponível em:<<https://tj-df.jusbrasil.com.br/jurisprudencia/464368077/20150110087592-0001558-6520158070016>>. Acesso em 26 de maio de 2024.





In 2015, the CNJ created the National Forum of the Judiciary for Monitoring and Effectiveness of Demands Related to the Exploitation of Labor in Conditions Similar to Slavery and Human Trafficking (FONTET). According to Resolution No. 212 of 12/15/2015, there was a considerable increase in the number of people rescued, having surpassed 50,000 by 2015, among other guidelines, with more than 500 cases in progress. FONTET was created to monitor the progress of these actions, propose improvement measures, promote judicial cooperation, encourage the creation of committees to effectively combat labor similar to slavery, and ultimately to combat crimes committed by employers. Therefore, we can conclude that thanks to the increase in reports and the intensification of inspections, there has been an increase in cases that were previously hidden by companies acting in secret, but are now beginning to come to light, resulting in the identification of those responsible and their punishment. With this growing visibility, discussions in the judiciary about labor analogous to slavery are progressing, as will be discussed below.

#### CASE LAW AND THE POSSIBILITY OF FILING LABOR LAWSUITS

The fight against labor analogous to slavery continues and is gaining more space. In April 2023, the Attorney General's Office (PGR) filed the Claim of Noncompliance with a Fundamental Precept (ADPF) No. 1053 with the Federal Supreme Court (STF) requesting that the crime of reduction to conditions analogous to slavery be considered imprescriptible. The ADPF was prepared with the support of the MPT and is currently being analyzed by Minister Nunes Marques. In October 2023, the TST decided that the search for compensation for cases of labor analogous to slavery would be imprescriptible, as it would be a crime against humanity. In this case, it was decided that the serious restriction of freedom cannot be limited over time. In addition to the ignorance of most of these people who are completely deceived and do not know that they are undergoing labor analogous to slavery, the reasoning used as a basis the sum. 647 of the STJ, ILO conventions, and ADPF 1053, which is on the UN's 2030 agenda. Although labor and criminal law cannot be confused, it would not be possible to separate the imprescriptibility, and this decision is a very important milestone in this fight.

After due inspections, and concurrently with the criminal proceedings, the MTE and MPT may initiate labor actions and propose public civil actions with a request for collective moral damages. If the measures are not sufficient, the Labor Court may judge these cases, allowing the filing of an individual labor action with compensation for installments already paid under the same title.



Regarding labor analogous to slavery, the lawsuits are seeking, in addition to labor reparations, compensation for moral damages. In this area, we can see a well-known case, which involved wineries in the South of Brazil, in which workers were rescued from degrading working conditions, which gained a lot of repercussion in 2023.

In this case, there was probably no use of the Due Diligence mentioned in the previous topic, which culminated in a conviction, as the workers were working for outsourced companies (Fênix and Oliveira de Santana), which served the Salton, Aurora and Garibaldi wineries. In this case, in addition to the sanctions already mentioned, these were subsidiarily convicted. Furthermore, only the company Fênix appears on the blacklist because it was the company fined, but all the companies signed the Conduct Adjustment Term.

As a result of this, an individual labor lawsuit was filed and in a recent ruling (April 2024), the time cards were invalidated, with the ruling that they would pay overtime that was not computed, breaks, work on Sundays and other labor charges. However, due to the degrading housing and food conditions of the workers, the companies were ordered to pay R\$50,000 in moral damages, jointly and severally in relation to the Garibaldi and Aurora cooperatives, which is being questioned by the author in the appeal.

As another example, we can see a case that occurred in 2023 in the South of Minas Gerais. In this case, a collective action was filed by the union representing 13 (thirteen) workers against the employer. There was an inspection and several irregularities were identified, from lack of basic sanitation to lack of PPE, and lack of first aid materials, precarious housing, etc.

In this lawsuit, the ruling determined moral damages of R\$20,000.00 (twenty thousand reais) for each worker. The employer appealed, but to date, the case has not been successfully reversed and is still in the TST.

In the analysis, we can see that the labor lawsuits are not varied, but in the majority, there is a conviction for at least collective or individual moral damages, with the aim of combating this regrettable practice that still occurs in this country. We can see that there is currently no consolidated case law on this case, which can lead to varied decisions, from low compensation, which can lead companies to commit the same acts again. Therefore, I concluded that it is necessary for this topic to be further addressed and discussed, being taken as a priority by the judiciary.

## **CONCLUSION**

The research in this article focused on the journey of the illegality of slave labor and the ways to combat it, demonstrating the general objective, as well as the entire struggle of human



beings as workers to have a dignified life in their work environment.

As can be seen, ancient slave labor was expressly legal for a long time, and over the years, camouflaged difficulties were created for its exploitation, until revolts and revolutions arose along with the understanding that Brazil would not grow if it continued with this model.

Apparently, in modern slave labor, the scope of slavery is outdated and completely intolerable in several issues, verifying that people are enticed with illusory proposals of work improvements, are mistreated and are housed in precarious places without hygienic conditions. We were also able to verify that the most affected are the merely poor and foreigners who arrive in the country with the hope of a better life, because they are ignorant and have no opportunity to study or even improve their lives. The measures adopted by the ILO, MTE and the Government aim to prevent and end slave-like labor, establishing agendas to raise awareness among people and companies about proper practices, and developing operations with Labor Inspectors, who risk their lives to discover and end the illicit conduct of employers, managing to obtain recovery rates and increase the number of better jobs.

We can thus conclude that the answer to the problem raised in this article is that the fight against it is evolving every day, despite resistance from some people. A few years ago, the Penal Code was amended, in its art. 149, which increased the penalties for those who commit this crime, and government ordinances were created with a focus on combating slave-like labor, with administrative penalties for employers. It is clear that, increasingly, the authorities are striving to eradicate degrading work and, consequently, to prevent employers from acting in this way. It is clear that labor justice is committed to arbitrating moral damages in lawsuits that attempt to penalize and restrain these employers, and that decisions are gradually evolving towards more intense combat, such as the adoption of imprescriptibility in these cases, both in the labor and criminal spheres.

In view of the above, it can be concluded that thanks to these forms of combat, more and more people are being freed, which brings hope for scarcity. The fight to eliminate slave-like labor will not end soon, but it is constantly evolving and gaining ground in this country..



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