

International labor organization and the fight against new ways of slavery in Brazil

Patrícia Tuma Martins Bertolin¹

Fabiana Larissa Kamada²

Universidade Presbiteriana Mackenzie

Introduction

The International Labor Organization (ILO) is the agency created, within the context of the first post-war, taking into account the international labor regulation, thus ensuring to the workers in the most varied nations a fair existence.

In such regard, countless International Agreements have addressed the most diverse subjects and, at a strategic time, by the end of the 1990's – a decade known by the Neoliberalism and by strong work precariousness –, the Statement on Principles and Essential Rights at Work was edited, which would then represent a landmark for the International Labor Law.

The 1998 Statement of Principles essentially established four elementary rights and principles at work, associated with eight International Conventions: 1) respect to union and association freedom of choice (Convention no. 87, dated 1948) and effective acknowledgment of the collective trading right (Convention no. 98, dated 1949); 2) removal of all sorts of forced or compulsory work (Conventions no. 29, dated 1930, and no. 105, dated 1957); 3) effective child labor abolishment (Conventions no. 138, dated 1973 and no. 182, dated 1999) and 4) removal of discrimination as to employment and occupation (Conventions no. 100, dated 1951, and no. 111, dated 1958).

The Statement sets forth that all ILO Member States should abide by, promote and apply such rights and principles, regardless of having ratified or not the concerning conventions, for being universal values, aimed at assuring a minimum labor standard. Consequently, the 1998 Statement of Principles represents a core tool to be

¹ Doctor in Labor Law by 'Universidade de São Paulo'; Professor in the Law Graduation Course and the Post-Graduate Program in Political and Economic Law of 'Universidade Presbiteriana Mackenzie (UPM)'; Head of the Research Group "Labor Law as a citizenship tool and economic power threshold".

² Master in Political and Economic Law by Universidade Presbiteriana Mackenzie. Expert in Labor Law and Labor Procedure. Guest Professor in the *Lato Sensu* Post-Graduate Program in Labor Law of 'Faculdade Presbiteriana Mackenzie'. Member of the Research Group "Labor Law as a citizenship tool and economic power threshold".

considered by the ILO member countries, so as to ensure dignity at work.³

As of 1999, the ILO has strived in building the *decent labor* concept, on which subject the agency has based all its activities since then. As such, it is construed as *productive work, properly compensated, exercised under conditions of freedom, equity and safety and able to assure dignified life for working men and women* (italics by the authors).⁴

This essay shall specifically deal with removal of all sorts of forced or compulsory work, as essential principle at work, in light of which the old and new ways of slavery which have been present in the Brazilian history shall be analyzed, as well as the meaning of forced work in Brazil, in the first years of the century XXI, and the measures adopted by the Brazilian government so as to eradicate it.

1. Slave Labor or Forced Labor?

The first major international document on Slave Labor was the Convention on slavery, signed in September, 1926, in Geneva, which sets out slavery as: *status or condition of an individual on whom the characteristics of the ownership right are fully or partially exercised*.⁵

Later, upon approval in the 14th meeting of the International Labor Conference (ILC), of the Convention no. 29, dated 1930, of ILO, ratified by Brazil on April 25, 1957, a new concept was created, using the expression "forced or compulsory labor". Under its article 2, 1, forced or compulsory labor is construed as *every work or service required from an individual under threat of any penalty and for which he/she did not offer him/herself spontaneously*.⁶

Supplementing the Convention no. 29, dated 1930, the ILO edited the Convention no. 105, dated 1957, ratified by Brazil in 1965. Such Convention deals with abolishment of the forced labor and sets forth that:

³ GOMES, Ana Virgínia Moreira; BERTOLIN, Patrícia Tuma Martins. Meaning of the Statement of Elementary Principles and Rights of Workers in ILO role as the international organization able to ensure labor content in the globalization process. *In: Revista de Direito do Trabalho*, São Paulo, v. 119, 2005, pp. 27-28.

⁴ ILO. *A abordagem da ILO sobre a Promoção da Igualdade de Oportunidades e Tratamento no Mundo do Trabalho* [ILO Approach on Fostering Equality of Opportunities and Treatment in the Labor World]. Série Trabalho Doméstico Remunerado no Brasil. Vol. 1, 2011.

⁵ Available at:

http://www.ILO.org.br/sites/all/forced_labour/legis_jur/sumario/CONVEN%C3%87%C3%83O%20S%C3%94BRE%20A%20ESCRAVATURA%20ASSINADA%20EM%20GENEVA.pdf. Access on: 10.09.2013.

⁶ Available at: <http://www.ILO.org.br/node/449>. Access on: 10.09.2015.

Art. 1 - Any Member of the International Labor Organization ratifying this convention undertakes to suppress forced or compulsory labor, and not to use it under any circumstances:

- a) as means to coerce, or as political education or sanction aimed at people who have or express certain political opinions, or state their ideological position to the political, social or economic arrangement established;
- b) as means to mobilize and use the labor for economic development purposes;
- c) as means to labor discipline;
- d) as punishment for joining strikes;
- e) as means of racial, social, national or religious discrimination.

Art. 2 - Any Member of the International Labor Organization ratifying this convention undertakes to adopt efficient measures, so as to immediately and fully abolishing the forced or compulsory labor, such as described in art. 1 hereof.

A lot has been said on the idea adopted by ILO, in the Convention no. 29, dated 1930, that forced Labor implies threat (coercion) by the employer upon the worker, who **did not offer him/herself freely**. It happens because, currently, it is noted that, most of the times, the worker is willing to spontaneously working and only then will he/she realize that the promises were deceptive, and then he/she can no longer escape from such situation.

Interpretation should comprise the cases of vice of will by the worker who accepted the service, believing the enticer's promises. Thus, the offended person's consent is irrelevant:

It is clear that no worker shall spontaneously offer him/herself to be exploited and not to have his/her labor rights acknowledged, if it was the case, such will would be void, because the labor protection standards are public, therefore, non-renounceable, as well as the human being's dignity.⁷

In Brazil, the Criminal Code provides for the typified crime as reduction to the slavery-equivalent condition:

Art. 149. Reducing someone to a slavery-equivalent condition, either by submitting them to forced labor or to an exhaustive work shift, either by submitting them to degrading work conditions, or by restricting, by any

⁷ BELISARIO, Luiz Guilherme. *A redução de trabalhadores à condição análoga à escravidão* [Reduction of workers to the slavery-equivalent conditions]. São Paulo: LTr, 2005, p. 102.

means, their locomotion due to any debt contracted upon with the employer or an employer's representative:

Penalty - confinement, from two to eight years, and fine, in addition to the violence-related penalty.

§ 1. The following cases incur into the same penalties:

I - curtails use of any transport means by the worker, for the purpose of retaining him/her in the work place;

II - keeps ostensive surveillance in the work place or appropriates documents or personal objects of the worker, for the purpose of retaining him/her in the work place.

§ 2. The penalty is increased from half, if the crime is committed:

I - against children or adolescents;

II - for racial, color, ethnic group, religion or origin prejudice.

Definition of contemporary slave labor⁸ brought by Act no. 10.803/03, which amended art. 149 of the Criminal Code, for part of the labor jurisprudence⁹, confused slave labor with degrading work, mainly by mentioning exhaustive work shift.

Accordingly, in order to characterize the slave or forced labor, deprivation of freedom requires being present and not only the degrading work conditions:

⁸ The ILO uses the expression forced or compulsory labor, documents and national laws use the expression "contemporary slave labor" which is quite controverted, but as explained by Rodrigo Schwarz: *Use of the expression "contemporary slave labor", strongly controverted and with fluid, indefinite content, but undeniable impact on the semantic, ideological and political fields, has been consolidating, in Brazil, for those who use it, to assign a (new) category, i.e., an element comprising the knowledge of certain historic, economic, social and cultural production processes, over-exploitation and resistances in different work experiences (...). The expression "contemporary slave labor" (...) is related to certain production, over-exploitation and resistance processes which, full of specific rationale, are transformed in time to be perpetrated, into a dynamic process and that the Brazilian past structures (persistent influence of the type of export colony, large estate, the organic character of slavery, the weight of the patriarchy and the incomplete and frustrated integration to its own people), converging into renewed 'modernization' projects to the field, among continuities and ruptures, partially perpetuated (...), the geopolitical, economic, social and cultural systems in which many other Brazilian experiences of quasi-slavery inserted in the past.* SCHWARZ, Rodrigo Garcia. Contemporary Slave Labor. In: SCHWARZ, Rodrigo Garcia (Org.). *Dicionário de Direito do Trabalho, de Direito Processual do Trabalho e de Direito Previdenciário Aplicado ao Direito do Trabalho*. São Paulo: LTr, 2012, p. 979.

⁹ FELICIANO, Guilherme Guimarães. Violência sexual contra a criança e o adolescente no marco da precarização das relações de trabalho [Sexual Violence against children and adolescents in the landmark of precariousness of the labor relationships]. *Revista da Associação dos Magistrados da Justiça do Trabalho da 15ª Região – AMATRA XV*. N° 3, LTr: São Paulo, 2010, p. 95.

Forced or slave labor is not only the meaning of low salaries or poor labor conditions. It is also not equivalent to mere economic necessity situations in which, for example, a worker has no conditions to leave his/her work place due to actual or alleged scarcity of employment alternatives. A clearer denial of decent work, the forced labor represents severe breach to rights and restriction to freedom, in accordance with ILO conventions on the subject and other similar international instruments on slavery, slavery-equivalent practices, servitude by debt or slavish condition.¹⁰

In the same sense:

The several types of forced labor worldwide have always in common two characteristics: use of coercion and denial of freedom. In Brazil, the slave labor results from the sum of degrading work and freedom deprivation. The worker is stuck to a debt, has his/her documents held, is taken to a geographically isolated place which prevents his/her return to home or cannot leave there, prevented by armed security guards. In Brazil, the term used for this type of coercive recruiting and labor practice in remote areas is slave labor; all situations comprising such term belong to the scope of the ILO conventions on forced labor. The term slave labor refers to degrading work conditions allied to the impossibility of leaving or escaping the farms due to fraudulent debts or armed guards.¹¹

Classifying such practice as a crime, submitting its agents to a freedom-depriving penalty, is an unarguable evolution. However, developments are still required, since the Country currently has major legislative instrument to fight the contemporary slave labor – and, in spite of it, this practice keeps on taking place. Thus, the magistrates must then use greater severity when applying the Criminal Law, which has not occurred frequently¹², and then the Judiciary Branch begins to effectively contribute towards a change to

¹⁰ *Emprego, desenvolvimento humano e trabalho decente: a experiência brasileira recente*. [Employment, human development and decent work: recent Brazilian experience]. Brasília: CEPAL/ PNUD/ILO, 2008, p. 35.

¹¹ Repórter Brasil. *Legislação Brasileira* [Brazilian Law]. Available at: <http://reporterbrasil.org.br/trabalho-escravo/legislacao-brasileira/>. Access on: 10.09.2013.

¹² O primeiro condenado criminalmente por trabalho escravo: *Antônio Barbosa de Melo, da fazenda alvorada, em Água Azul do Norte, sul do Pará, teve sua pena convertida em pagamento de 30 cestas básicas por seis meses*. [The first person in history to be criminally sentenced for slave labor: *Antônio Barbosa de Melo, from the farm Alvorada, in Água Azul do Norte, southern Pará, had his penalty converted into payment of 30 basic food baskets for six months*] Repórter Brasil. *Legislação Brasileira*. Available at: <http://reporterbrasil.org.br/trabalho-escravo/legislacao-brasileira/>. Access on: 10.09.2013.

paradigms that the human person dignity and the social value of the work, which are constitutional imperatives, require.

2. Colonial slavery

Brazil was colonized with no concern by the metropolis in populating the territory and establishing socially and environmentally sustainable economic activities. Brazilian economy was based on the monoculture-based large estate for export purposes and on slavery of colored individuals, which lasted for over three centuries.

In the colonial Brazil, slavery was a systematic and profitable reality. The large landholders profited, because, regardless of what was produced, they used the arms of the black people; the enticers in African lands earned, by promoting conflicts and clearing out the tribal societies; the traffickers earned, due to illegality surrounding the whole process.

Out of all tragedies which marked Brazilian history, undoubtedly, over three hundred years of slavery of the black people was the most contributing towards establishing the lines of one of the most undeveloped countries of the world, either in terms of labor valuation and human dignity, or social development and respect to social-environmental values.¹³

The Brazilian exploratory colonization model perpetuated an unequal society, in which the human being exploitation seems, sometimes, to be part of the landscape.

Turning the human being into a thing lasted centuries, even if furtively, shaping a society which reproduces the colonial model: in the field, the large estate still imposes itself upon small properties of familiar agriculture; in the cities, the slum-related conditions of the populations expelled from the field and urban workers deprived from the benefits of the whole system replaces the former slave quarters, with few or no advantage.¹⁴

¹³ BERTOLIN, Patrícia Tuma Martins; ROMANO, Ana Maria. Trabalho escravo na floresta: uma leitura socioambiental. [Slave labor in the woods: a social-environmental Reading]. In: SILVA, Solange Teles da; CUREAU, Sandra; LEUZINGER, Márcia Dieguez. (Orgs.). *Código Florestal: desafios e perspectivas*. [Forest Code: Challenges and perspectives]. 1ª ed. São Paulo: Editora Fiuza, 2010, v. 01, pp. 90-91.

¹⁴ *Idem. ibidem*, p. 91.

Upon slavery abolishment, in 1888, the released black people were cast to their own luck. No project was designed to promote inclusion of that free and unqualified labor, leading to misery and human degradation over a century later: in the field, dispossessed rural workers and labor in the powers of the enticers; in the cities, domestic workers who, only recently and after too much polemic, were assigned the same labor rights as the remaining employees, in order to mention the most flagrant examples.

3. Contemporary slavery: some representations

3.1. Slave labor in the field: modern technology X archaic relations

The contemporary slavery is characterized by the impossibility of breaking the labor relationship by the worker, which differentiates it from the colonial slavery. However, the contemporary slavery is based on an alleged debt the worker assumes with the receiver of his/her labor, which begins upon funding the transportation to the work place.¹⁵ In case of the rural worker, his/her "imprisonment" to the agreement by the debt contracted upon by acquiring food items in the grocery of the own farm, in addition to work devices is quite common, which practice is subject to sentence by the Labor Law.¹⁶

According to Jairo Lins de Albuquerque Sento-Sé, the slave labor is present when the agreement is contracted upon by means of fraud or enticement, with worker having received an interesting work proposal, usually far from his/her hometown. Submitted to degrading labor conditions, he/she is subject to an excessive work shift, having his/her salary paid fully *in natura* and being prevented, by the use of violence or threat, from ending the labor relationship, on the grounds that he/she would have contracted upon unsettled debits with the receiver of his/her labor.¹⁷

It represents a severe breach to the Human Rights and, even occurring in activities deemed as evolved from the technological point

¹⁵ The same rationale is applied to the illegal immigrants, usually Bolivian people, who work in the textile manufacturing, in cities like São Paulo. In such regard, refer to: BARUKI, Luciana Veloso Rocha Portolese; BERTOLIN, Patrícia Tuma Martins; Fernandez. Migrantes clandestinos na região central de São Paulo: a inclusão perversa. [Clandestine migrants in the central region of São Paulo: perverse inclusion.] In: BOGGIO, Paulo Sérgio; CAMPANHÃ, Camila. (Orgs.). *Família, Gênero e Inclusão Social*. 1ª ed. Memnon: São Paulo, 2009, pp. 107-119.

¹⁶ Provision of products by the employer himself with coercion or enticement for use of the grocery or the services, usually located in the establishment is called truck system or slavery by debt by the Labor Law. Such practice is prohibited by art. 462, § 2, of the Consolidated Labor Laws (CLT).

¹⁷ SENTO-SÉ, Jairo Lins de Albuquerque. *Trabalho Escravo no Brasil*. São Paulo: LTr, 2001, p. 20.

of view, such as the agribusiness¹⁸, it is always characterized by misery and unawareness of rights, by the worker, allowing for one of the authors of this essay, in joint authoring with Ana Maria Romano, focused on the subject, in another situation, to verify the following:

...social sustainability is as – or more – disrespected as/than environmental sustainability. It occurs because, in Brazil, the historic-cultural appeal is too strong as to the fact that the arms who plant and harvest are used to be exploited. Thus, in spite of the normative strength of the Constitution, the social function of the property, as a content to provide legitimacy to the law itself, finds resistance in the spirit, in the consciousness of the people.

Exploitation begins upon excessive hierarchy of the social relations in the field: the social-economic differences are so big that the model “manor house-slave quarter” remains alive.¹⁹

In 1994, the Human Rights Watch and Center for Justice and International Law (CEJIL) Organizations, jointly with the Pastoral Land Commission (CPT), applied for a petition to the Inter-American Commission of Human Rights (CIDH) against Brazil, denouncing the case of the slave worker José Pereira. José, a minor, was severely injured while trying to escape with the worker known as “Paraná”, who was dead, from the Farm Espírito Santo, where both of them worked, in Sapucaia, Pará, in 1989.

Brazil was accused of not properly responding to the denouncements on such practices and for the lack of interest in investigating the murder. At that time:

The victim [José Pereira], who was seventeen (17) years old, jointly with other sixty (60) workers, were held against their will and forced to work with no compensation and under unhuman and illegal conditions. When trying to escape from the farm, José Pereira and another worker were hit by the shoots of a firearm. José Pereira was hit by the shoots, but he survived, because his aggressors thought he was dead. The other worker following him, only known by his

¹⁸ In such regard, refer to: ROMANO, Ana Maria; BERTOLIN, Patrícia Tuma Martins. O Brasil e os biocombustíveis: quem ganha com isso? [Brazil and the biofuel: who earns with it?] *In: REID - Revista Internacional de Direito e Cidadania*, April/2001, pp. 145-162. Also available in the online version, through the website: <http://www.reid.org.br/?CONT=00000247>. Access on 06.09.2015.

¹⁹ ROMANO, Ana Maria; BERTOLIN, Patrícia Tuma Martins. O Brasil e os biocombustíveis: quem ganha com isso? [Brazil and the biofuel: who earns with it?] *In: REID - Revista Internacional de Direito e Cidadania*, April/2001, pp. 145-162. Also available in the online version, through the website: <http://www.reid.org.br/?CONT=00000247>. Access on 06.09.2013.

nickname "Paraná", was dead. Their bodies were taken by a truck for the murderers and left at a land near another farm. José Pereira managed to get to this other farm and was assisted, which made possible for him to file charges.²⁰

In 2003, Brazil signed an agreement with the denouncing entities, acknowledging its international liability on the case, paid indemnity to José Pereira and approved the Act no. 10.706/03, creating the commitment to implement public policies and legislations concerning prohibition of slave labor. On such same act, the National Board for Slave Labor Eradication (CONATRAE) was created, significant landmark to fight contemporary slavery.

In the cities, there are other relations being established more or less under the same patterns. We shall analyze below the domestic labor, especially the child one, and the labor of the immigrants, mostly Bolivians, in the textile manufacturing industries in cities such as São Paulo.

3.2. In several Brazilian cities, domestic child labor persists

Like the other manual works, the domestic labor may also be associated with the slavery present in the Brazilian colonization, being part of the gender and race discrimination process operated in the Country, which may be read in a central work aimed at studying the Brazilian roots:

To the good figure of the black nursemaid who, at the patriarchal ages, raised the boy by breastfeeding him, shaking him on his net or cradle, who taught him his first wrong Portuguese words, the first "Lord's prayer", the first "Hail Mary prayer" (...), feeding him with the first manioc flour mush with meat (...) – other presences of black people occurred in the lives of the Brazilians from the past. The presence of the toy-sharing kid. The old, story-teller negro. The *mucama*. The cook...²¹

²⁰ SCHWARZ, Rodrigo Garcia. Trabalho escravo contemporâneo. [Contemporary slave labor]. In: SCHWARZ, Rodrigo Garcia (Org.). *Dicionário de Direito do Trabalho, de Direito Processual do Trabalho e de Direito Previdenciário Aplicado ao Direito do Trabalho*. São Paulo: LTr, 2012, p. 989.

²¹ FREIRE, Gilberto. *Casa-grande & senzala: formação da família brasileira sob o regime da economia patriarcal*. [Manor House & Slave Quarter: formation of the Brazilian family under the patriarchal economy regime.] 22^a Ed. Rio de Janeiro: Livraria José Olympio Editora, 1983, pp. 335-336.

There is another aspect in which the presence of the Brazilian colonization is noted. In the Country, in which agriculture was dominant as economic activity, using slave labor, the proprietors of the sugar plantation complexes used to hold, in addition to the economic power, the political power. Even after abolishment of the slavery, such landholders, the “colonels”, remained powerful also politically, by controlling the voting system, by means of the “vote corraling” and having many “godsons”, who were in charge of “protecting”, at the cost of the government structure – and who served them.²²

Maybe it helps explaining why, in Brazil, such reality still exists. However, this is not a solely Brazilian phenomenon, since all over the world there are about 10.5 million children working as maids, according to data from the research made recently by ILO:

Around 10.5 million children all over the world, most of whom minors, work as maids in houses of other people, in some cases under hazardous and slavery-related conditions, in accordance with a new report by the International Labor Organization (ILO) disclosed today (11). Out of such working children, 6.5 million are aged between 5 and 15 years. Over 71 percent are girls. According to the most recent data mentioned in the new ILO report – ***Erradicar o trabalho infantil no trabalho doméstico [Eradicating child labor in the domestic work]*** –, these children work at third-party or employers’ houses, carrying out tasks such as cleaning, ironing, cooking, gardening, water gathering, taking care of other children or elderly. (...) It is estimated that additional 5 million children, who are above the minimum legal age for work in their countries, are involved in compensated or non-compensated domestic work.²³

As to the domestic child labor in Brazil, it is estimated that there were over 200 thousand children and adolescents working on it, notwithstanding the child labor eradication programs existing in the country. According to data from the National Forum for Prevention

²² In such regard, refer to: LEAL, Victor Nunes. *Coronelismo, enxada e voto*. [Coronelism, hoe and vote.] 4^a ed. São Paulo: Ed. Alfa-Ômega, 1978. Also José Murilo de Carvalho notes: *The more unequal the coronel-worker relationship was, there was minimum reciprocity. In exchange for work and loyalty, the worker received protection against the police and assistance when needed. There was an implied understanding regarding such mutual obligations. This side of the relationships concealed the worker exploitation and helps explaining durability of the power of the coronels.* (*Cidadania no Brasil: o longo caminho [Citizenship in Brazil: the long way]*). 9^a Ed. Rio de Janeiro: Civilização Brasileira, 2007, p. 64).

²³ ILO. *Notícias: 10,5 milhões de crianças no trabalho infantil doméstico em todo o mundo*. [News: 10.5 million children in domestic child labor all over the world.] June, 2013. Available at: <http://www.ILObrasil.org.br/content/105-milhoes-de-criancas-no-trabalho-infantil-domestico-em-todo-o-mundo>. Access on: 10.09.2013.

and Eradication of Child Labor (FNPET), based on the data from PNAD/IBGE (2008-2011):

While the number of children and adolescents aged between 5 and 17 years who worked fell 17.9% in this period, the number of cases of children and adolescents working in domestic child labor decreased from 325 thousand (2008) to 258 thousand (2011) – reduction of 67 thousand cases. In proportional terms, the reduction was only 0.2 percent: from 7.2% in 2008 to 7% in 2011. (...) According to the 2011 research, 93.7% of the children and adolescent universe working in domestic child labor are girls (241 thousand). Boys amount to 16 thousand. And 67% of domestic child workers are black-colored (172.666) while the non-black people amount to 85.026. “This data expresses the iniquity of gender and race occurring in the domestic child labor”, asserts Isa [executive secretary of FNPETI]. (...) In 2011, out of the universe of 258 thousand children and adolescents (aged 5 to 17 years) under domestic child labor who provided services to other families, 102.668 (39.8%) were in the Northeast; 66.663 people (25.9%) in the Southeast; 35.590 (13.8%) in the North; 34.755 (13.5%) in the South and 18.015 (7%) in the Mid-West.²⁴

The arguments used by the employers to attract the child to the domestic work are usually the same: they allege the child will be treated as their daughters, ensuring to them study and access to growth opportunities. In practice, however, while their children go to private schools and have time for the childhood plays, the maid girls are denied all of that, even access to public school.²⁵

Parents of the working children also lack enough sense on the several problems that exercising such activities can cause to the children. The reality in which most of them is inserted causes many of them to see in delivering their children a positive possibility:

...that is the pain of extreme poverty which explains the reason for people to deliver their daughters for exploitation, as maids, at the houses of others. For

²⁴ FNPETI. *Números do trabalho infantil doméstico no Brasil preocupam: A situação do trabalho infantil doméstico no Brasil pouco se alterou entre 2008 e 2011, de acordo com relatório divulgado pelo FNPETI.* [Figures of domestic child labor in Brazil are of concern: Situation of domestic child labor in Brazil had few changes between 2008 and 2011, according to the report disclosed by FNPETI.] June, 2013. Available at: <http://www.fnpeti.org.br/destaque/numeros-do-trabalho-infantil-domestico-no-brasil-preocupam/>. Access on: 10.09.2013.

²⁵ DUTRA, Maria Zuila Lima. *Meninas domésticas, infâncias destruídas: legislação e realidade social.* [Maid girls, childhood destroyed: law and social reality.] São Paulo: Ed. LTr, 2007, p. 90.

these parents, such donation represents freeing their daughters from misery, because they imagine she will have school, food, a house, clothes, shoes and leisure assured to her. That is the chance of a future different from theirs...²⁶

Such chance, almost always, is frustrated and the conditions of the children and adolescents are precarious:

Most of the children do not receive income for their work: 65% of working children who study and 45% of those who don't study have zero income. Out of children aged 7 to 15 years working and receiving salaries, the average monthly salary of those studying is BRL 151, while the salary of those who don't go to school is VRL 226.18.²⁷

This type of exploitation, based on false solidarity is one of the worst ways of slavery. It is deplorable to witness, still lately, such reality. Statistics and studies show there was a small decrease in the number of children and adolescents working as maids under slavery-related conditions. However, the figures continue high and the reality still worries.

3.3. Clandestine migrant labor in the textile manufacturing industry

Another form of contemporary slavery is present in the "globalized world", in which circulation of workers occurs, many times, in a not so free way, being leveraged by the inexistence of employments in the countries of origin: work of immigrants in textile manufacturing industry.

As noted by Leonardo Cavalcanti, expressions like "cultural diversity" and "multiculturalism" have been many times used distorted, for the purpose of justifying political actions aimed at excluding the non-nationals. Differently from racism, a situation in which the other is explicitly lowered, the xenophobia and ethnocentrism use strategies which exalt ethnic differences and cultural identities, naturalizing the differences and then trying to justify the inequalities.²⁸

²⁶ *Idem. ibidem*, p. 71.

²⁷ Instituto de Pesquisa Econômica Aplicada. Comunicado da Presidência. *Pesquisa Nacional por Amostra de Domicílio. Primeiras Análises: Mercado de Trabalho, Trabalho Infantil e Previdência*. [National Research by Sample of House. First Analyses: Work Market, Child Labor and Social Security.] v. 2. n. 10. September 30, 2008. Available at: <http://www.ipea.gov.br/default.jsp>. Access on: 30/09/2008.

²⁸ CAVALCANTI, Leonardo. Imigrantes na cidade: paradoxos e pleonasmos. [Immigrants in the city: paradoxes and pleonasms.] *In: Revista Travessia. Revista do Migrante*. Ano XVIII, n° 51, January-April, 2005, p. 22.

Existence of huge contingent of clandestine immigrant workers is evident, in almost entirety comprised of Bolivians, working in the textile manufacturing industry, in the central region of São Paulo, in districts like Bom Retiro, Pari and Brás.²⁹

Studies show the slaved workers are mostly migrants, analphabets, clandestine people, handicapped people, sick, alcoholics and people who never had any identity documents. Most of them are men, aged between 18 and 44 years, and 85% of the rescued people had started working under 12 years of age.³⁰

They usually come to Brazil with promises of finding here better life and working conditions, being in debt with the person who funds their trip. Very often, when they get here, they have their documents seized. They work clandestinely and under degrading conditions, complying with excessive work shifts and living in the work place.

The prejudice in relation to the migrant, deemed to belong to a lower culture, regretfully does not exist in relation to the goods manufactured from their work, for which low prices are charged:

The productive chain of the profitable textile manufacturing market is summarized into recruiting cheap labor from Bolivia (around 1200 to 1500 get here per month to work in São Paulo). Most of them in small, clandestine textile plants located in 18 districts of São Paulo which provide the goods to the large stores, such as Marisa, Riachuelo, Renner, C&A etc.³¹

Thus, both the worker slaved on the field, and the maid girls and Bolivian immigrants in the textile manufacturing industry, are involved in a chain which prevents Brazil from putting into practice the essential rights outlined in the 1998 Statement of Principles, a chain which is strengthened by the sure impunity by those who slave them and by the disrespect to the dignity of the person who works, inheritances from our enslaver past.

4. Measures adopted by Brazil towards eradicating the Slave Labor

Recently, in the State of São Paulo, the Act no. 14.946/13 was promulgated and sanctioned, which seizes the registration of Tax on Goods and Services (ICMS) from companies proved to be involved

²⁹ In such regard, refer to: BARUKI, Luciana Veloso Rocha Portolese; BERTOLIN, Patrícia Tuma Martins; Fernandez. Migrantes clandestinos na região central de São Paulo: a inclusão perversa. [Clandestine migrants in the central region of São Paulo: perverse inclusion.] In: BOGGIO, Paulo Sérgio; CAMPANHÃ, Camila (Orgs.). *Família, Gênero e Inclusão Social*. 1ª ed. Memnon: São Paulo, 2009, pp. 107-119.

³⁰ MPT. *Labor: Revista do Ministério Público do Trabalho*. Ano I, nº 1, 2013, p. 13.

³¹ *Idem. ibidem*.

with slave labor, preventing them from establishing commercial relationships. In addition, the government has the State Board for Slave Labor Eradication (COETRAE-SP)³², set-up by the Decree no. 57.368, dated September 26, 2011, and aimed at proposing mechanisms for prevention and weakening of the Slave Labor in the State, jointly with the National Program of Decent Labor, with the National Plan of Slave Labor Eradication and with the National Plan of Weakening People Trafficking.

Some other States, inspired by the act in São Paulo, such as Mato Grosso do Sul, Tocantins, Rio de Janeiro and Maranhão, presented similar proposals. The latter, in turn, lost the chance to advance in fighting the slave labor, by prohibiting a bill on the matter. According to the news of the NGO Repórter Brasil:

The governor of the State of Maranhão, Roseana Sarney (PMDB), prohibited the bill no. 169/2013, which had been approved in the State Legislative Assembly and providing for seizure of the registration of Tax on Goods and Services (ICMS) of companies evidenced with slave labor. The veto was published in the Monday issue (5) [05.08.2013] of the Official Gazette of the Legislative Assembly and, in her justification, the governor alleged that the text is unconstitutional.³³

A research by COETRAE-MA, in 2007, showed Maranhão was the main provider of slave labor. In spite of that, the State vetoed the Bill no. 169/2013.

The Labor and Employment Department (MTE) has also been working to fight work under slavery-related conditions, by means of the surveillances. Partner of the National Plan for Slave Labor Eradication, document drafted by the Special Board of the Board for Defense of Human Person Rights (CDDPH), established by the Resolution no. 05/2002 of CDDPH.

Currently, MTE has ten mobile groups, out of which four are for fighting slave labor.³⁴ In spite of having small number of fiscal labor auditors, the MTE, jointly with the Public Labor Prosecutor's Office (MPT), has reached good results.

The fiscal labor auditor Paulo César Lima, in an interview to the magazine *Labor*, of MPT, when asked about the story that touched him most in the rescues, answered:

The case of the boy Abel. He was 12 years old and worked in a coal-pit in Açailândia (MA). I talked to him. – How is your

³² Several States have the State Board for Slave Labor Eradication (COETRAE), such as, TO, CE, MT, RS, RJ, BA, MA and GO.

³³ Repórter Brasil. *Notícias: Governadora do Maranhão veta lei contra escravidão*. [News: Governor of Maranhão prohibits law against slavery.] 07.08.2013. Available at: <http://reporterbrasil.org.br/2013/08/governadora-do-maranhao-veta-lei-contra-escravidao/>. Access on: 10.09.2015.

³⁴ MPT. *Labor: Revista do Ministério Público do Trabalho*. Ano I, nº 1, 2013, p. 9.

life here? – I wake up 5 in the morning. I go to take a bath, have breakfast and start to flag [place wood under the condition of being measured]. Then, I fill up the furnace and have lunch. I stop at 4 p.m. – And don't you play or study? – I don't have time for this. A 12-year-old child deprived from hope. He had no life perspective. He lived saving money to buy a house for his mother, who had leg issues. His biggest dream was having a bicycle. He was released and received some money. I've never heard of Abel again.³⁵

MTE keeps an enrollment of companies and people notified due to slave labor exploitation, regulated by the Inter-Departmental Ordinance no. 2, dated May 12, 2011, updated in June, 2013, called "black list of slave labor".³⁶ In the update dated June 28, 2013, 136 new employers were included, 6 were included again and 26 were excluded. According to the Labor and Employment Department:

Among the new inclusions, we highlight that there are 61 employers whose major economic activity is cattle raising, 14 related to vegetal coal production and 09 to wood extraction. It should also be highlighted that among the 136 names included in the update, there were 46 occurrences in the State of Pará, 19 in Minas Gerais and 13 in Tocantins.³⁷

The "black list of slave labor", created in 2003, aims to provide more transparency to the actions by the public authorities in fighting slave labor. The list contains the slave labor exploiter employers which had the chance to defend themselves in first and second administrative spheres.

For these and other actions, Brazil has developed in fighting contemporary slave labor, such that Luiz Machado, Coordinator of the Slave Labor-Fighting Project of the International Labor Organization in Brazil, asserted that currently the Country is...

... "global reference in Slave Labor-fighting", complimented the regulation of the new law and defended that the Proposal of Constitutional Amendment 157/A (former PEC 438), the Slave Labor PEC, would be approved in the National Congress. Such

³⁵ MPT. *Labor: Revista do Ministério Público do Trabalho*. Ano I, nº 1, 2013, p. 11.

³⁶ The "black list of slave labor" had been originally established by the Ordinances no. 1.234/2003 and no. 540/2004, both from MTE.

³⁷ MTE. *Portaria do MTE cria cadastro de empresas e pessoas autuadas por exploração do trabalho escravo*. [MTE Ordinance creates register of companies and people sentenced by exploitation of slave labor.] Available at: http://portal.mte.gov.br/trab_escravo/portaria-do-mte-cria-cadastro-de-empresas-e-pessoas-autuadas-por-exploracao-do-trabalho-escravo.htm. Access on: 11.09.2015.

*measure establishes expropriation of proslavery properties.*³⁸

The Public Labor Prosecutor's Office (MPT) has the National Coordination Office for Slave Labor Eradication (CONAETE) aimed at eradicating Slave Labor, by means of investigations, judicial and extrajudicial actions promoting punishment of the employer, as well as prevention of the crime and inclusion of the worker rescued in the labor market.

The data from the Division of Inspection for Slave Labor Eradication of MTE show that over 43 thousand workers were rescued between 1995 and 2012. São Paulo had 75 denouncements of urban slave labor only in the year 2012.³⁹

Companies which exploit slave labor are sentenced, in some cases, by "Social Dumping", which means *market share at the cost of little ethical resources such as irregular labor exploitation (...) – evasion of labor rights to increase profit and promote unfair competition.*⁴⁰

All such actions aim to provide efficacy to the Conventions no. 29 and 105, of ILO, with the technical cooperation of governmental agencies and offices of other partners, such as the Non-Governmental Organization Repórter Brasil, for fighting forced labor and reoccurrence prevention.

Conclusions

In the second decade of the century XXI the colonial slavery still produces effects in Brazil, even if under new features, such as domestic child labor and that of clandestine Bolivian immigrants in the textile manufacturing industry.

Both worker slaved in the field, and the maid girls and Bolivian immigrants in textile manufacturing, are involved in a mesh which prevents Brazil from putting into practice the essential rights outlined in the 1998 Statement of Principles, a mesh which is strengthened by the sure impunity by those who slave them and by the disrespect to the dignity of the people who work, inheritances of our enslaver past.

The diagnosis and understanding of such phenomenon are vital for the Country to be able to eradicate forced labor or labor under

³⁸ Repórter Brasil. Available at: <http://reporterbrasil.org.br/2013/05/alckmin-regulamenta-lei-que-cassa-icms-de-empresas-que-empregam-trabalho-escravo/>. Access on: 11.09.2015.

³⁹ MPT. Um problema do Brasil contemporâneo. [A problem of the contemporary Brazil.] In: *Labor: Revista do Ministério Público do Trabalho*. Ano I, n° 1, 2013, pp. 14 e 20.

⁴⁰ MPT. *Labor: Revista do Ministério Público do Trabalho*. Ano I, n° 1, 2013, p. 20.

slavery-related conditions, taking into account that the misery and inexistence of distributive social politics work like a type of trampoline for slavery of the working person.

Brazil is far from eradicating the slave, forced or compulsory labor, but some actions taken into effect over the last years are being able to free up workers submitted to such conditions.

As to the penalties for the exploiters of slavery-related labor, although there has been a clear development by the criminal law, by penalizing the conduct, imposing imprisonment penalty to the agents who incur into it, the Judiciary branch has not applied the law satisfactorily, which is essential for the change of enslaver mindset still operating in the Country, moreover in distant regions, where inspection has difficult access and where the power of the "coronels" is still strong, assuring to them the surety of impunity.

The 1998 Statement, by dealing with the issue as an essential right in the work, imposing its compliance to all Member States, provided means for the Law and the Public Policies in the Country to evolve, enabling inclusion of such workers into the Brazilian society, in a democratic and citizen-like way. Facing it with courage is urgent, because, in the middle of the century XXI, this situation should have been solved, being summarized into a sad story in the books of the Brazilian History.

References

- BARUKI, Luciana Veloso Rocha Portolese; BERTOLIN, Patrícia Tuma Martins; Fernandez. Migrantes clandestinos na região central de São Paulo: a inclusão perversa. [Clandestine migrants in the central region of São Paulo: perverse inclusion.] *In*: BOGGIO, Paulo Sérgio; CAMPANHÃ, Camila. (Orgs.). *Família, Gênero e Inclusão Social*. 1ªed. Memnon: São Paulo, 2009, pp. 107-119.
- BELISARIO, Luiz Guilherme. *A redução de trabalhadores à condição análoga à escravidão. [Reduction of workers to the slavery-equivalent conditions]* São Paulo: LTr, 2005.
- BERTOLIN, Patrícia Tuma Martins; ROMANO, Ana Maria. Trabalho escravo na floresta: uma leitura socioambiental. [Slave labor in the woods: a social-environmental Reading] *In*: SILVA, Solange Teles da; CUREAU, Sandra; LEUZINGER, Márcia Dieguez. (Orgs.). *Código Florestal: desafios e perspectivas*. 1ª ed. São Paulo: Editora Fiuza, 2010, v. 01, pp. 80-99.
- CARVALHO, José. *Cidadania no Brasil: o longo caminho [Citizenship in Brazil: the long way]*. 9ª ed. Rio de Janeiro: Civilização Brasileira, 2007.
- CAVALCANTI, Leonardo. Imigrantes na cidade: paradoxos e pleonasmos. [Immigrants in the city: paradoxes and pleonasms.] *In Revista Travessia. Revista do Migrante*. Ano

- XVIII, n° 51, janeiro-abril de 2005.
- DUTRA, Maria Zuila Lima. *Meninas domésticas, infâncias destruídas: legislação e realidade social*. [Maid girls, childhood destroyed: law and social reality.] São Paulo: Ed. LTr, 2007.
- Emprego, desenvolvimento humano e trabalho decente: a experiência brasileira recente*. [Employment, human development and decent work: recent Brazilian experience]. Brasília: CEPAL/PNUD/ILO, 2008.
- FELICIANO, Guilherme Guimarães. Violência sexual contra a criança e o adolescente no marco da precarização das relações de trabalho [Sexual Violence against children and adolescents in the landmark of precariousness of the labor relationships]. Revista da associação dos Magistrados da Justiça do Trabalho da 15ª Região - AMATRA XV. N° 3, ano 2010. LTr: São Paulo, 2010.
- FNPETI. *Números do trabalho infantil doméstico no Brasil preocupam: A situação do trabalho infantil doméstico no Brasil pouco se alterou entre 2008 e 2011, de acordo com relatório divulgado pelo FNPETI*. [Figures of domestic child labor in Brazil are of concern: Situation of domestic child labor in Brazil had few changes between 2008 and 2011, according to the report disclosed by FNPETI.] June, 2013. Available at: <http://www.fnpeti.org.br/destaque/numeros-do-trabalho-infantil-domestico-no-brasil-preocupam/>. Access on: 10.09.2015.
- FREIRE, Gilberto. *Casa-grande & senzala: formação da família brasileira sob o regime da economia patriarcal*. [Manor House & Slave Quarter: formation of the Brazilian family under the patriarchal economy regime.] 22ª Ed. Rio de Janeiro: Livraria José Olympio Editora, 1983.
- GOMES, Ana Virgínia Moreira; BERTOLIN, Patrícia Tuma Martins. Meaning of the Statement of Essential Principles and Rights of Workers in the position of ILO as the international organization able to ensure a labor content in the globalization process. *In: Revista de Direito do Trabalho*, São Paulo, v. 119, 2005, pp. 15-30.
- LEAL, Victor Nunes. *Coronelismo, enxada e voto*. [Coronelism, hoe and vote.] 4ª ed. São Paulo: Ed. Alfa-Ômega, 1978.
- MPT. *Labor: Revista do Ministério Público do Trabalho*. Ano I, n° 1, 2013.
- MTE. *Portaria do MTE cria cadastro de empresas e pessoas autuadas por exploração do trabalho escravo*. [MTE Ordinance creates register of companies and people sentenced by exploitation of slave labor.] Available at: http://portal.mte.gov.br/trab_escravo/portaria-do-mte-cria-cadastro-de-empresas-e-pessoas-autuadas-por-exploracao-do-trabalho-escravo.htm. Access on: 11.09.2013.

- ILO. *Notícias: 10,5 milhões de crianças no trabalho infantil doméstico em todo o mundo*. [News: 10.5 million children in domestic child labor all over the world.] June, 2013. Available at: <http://www.ILObrasil.org.br/content/105-milhoes-de-criancas-no-trabalho-infantil-domestico-em-todo-o-mundo>. Access on: 10.09.2013.
- Repórter Brasil. *Legislação Brasileira* [Brazilian Law]. Available at: <http://reporterbrasil.org.br/trabalho-escravo/legislacao-brasileira/>. Access on: 10.09.2013.
- _____. *Notícias: Notícias: Governadora do Maranhão veta lei contra escravidão*. [News: Governor of Maranhão prohibits law against slavery.] 07.08.2013. Available at: <http://reporterbrasil.org.br/2013/08/governadora-do-maranhao-veta-lei-contra-escravidao/>. Access on: 10.09.2015.
- ROMANO, Ana Maria; BERTOLIN, Patrícia Tuma Martins. O Brasil e os biocombustíveis: quem ganha com isso? [Brazil and the biofuel: who earns with it?] *In: REID - Revista Internacional de Direito e Cidadania*, April/2001, pp. 145-162. Also available in the online version, through the website: <http://www.reid.org.br/?CONT=00000247>. Access on 06.09.2015.
- SCHWARZ, Rodrigo Garcia (Org.). *Dicionário de Direito do Trabalho, de Direito Processual do Trabalho e de Direito Previdenciário Aplicado ao Direito do Trabalho*. São Paulo: LTr, 2012.
- SENTO-SÉ, Jairo Lins de Albuquerque. *Trabalho Escravo no Brasil*. São Paulo: LTr, 2001.