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# **BRAZIL**

## **Politically motivated criminal charges against land reform activists**

### **1. INTRODUCTION**

Amnesty International is concerned at the use of politically motivated criminal charges and judicial orders against members of the Brazilian *Movimento dos Trabalhadores Rurais Sem Terra* (MST), Landless Rural Workers' Movement, and against other rural activists. The organization believes that groundless criminal charges are being used against José Rainha Júnior and other rural activists as a form of political intimidation. In particular, Amnesty International is concerned that the trial on 10 June 1997, in which José Rainha, an MST leader, was sentenced to 26½ years imprisonment for orchestrating the murders of a landowner and policeman, did not meet international fair trial standards. The guilty verdict and the sentence appear to have been based more on his membership of the MST than on any convincing proof related to the murder charge in question.

Amnesty International takes no position on competing claims for land ownership, nor on questions relating to judicial decisions over land tenure. However, the organization is concerned about human rights violations in the context of land disputes in Brazil, with its frequent reports of excessive use of force, ill-treatment, torture, extrajudicial executions and arbitrary arrest by military police carrying out land evictions, and continuing violent attacks on rural workers by hired gunmen acting with impunity.

This report focuses on the use of legal instruments to harass leaders and members of the MST and other advocates of land reform. It examines in detail the recent conviction of José Rainha and the factors that lead Amnesty International to regard him as a potential prisoner of conscience. José Rainha has been the subject of a number of politically motivated criminal charges, that constitute a pattern of harassment related to his activities in the MST in organizing land occupations. His trial did not conform to international fair trial standards and he was convicted more on the basis of his profile and MST activism, than on the basis of objective and convincing evidence. The false conviction of José Rainha must be understood within the context of land conflict in Brazil.

### **2. LAND-RELATED CONFLICT IN BRAZIL**

Brazil has one of the most concentrated patterns of land distribution in the world. The government's last agricultural census of 1985 showed that large land holdings of over 1,000 hectares made up only 0.83% of rural properties but accounted for 43.5% of

cultivated land. By contrast, small holdings of under 10 hectares comprised 53.1% of rural properties but accounted for only 3.0% of cultivated land.<sup>1</sup>

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<sup>1</sup>Instituto Brasileiro de Geografia e Estatística, *Censo Agropecuário*, 1985.

Brazilian land law is complex. It is possible to acquire land through purchase, inheritance, peaceful occupation and cultivation, and government expropriation. This gives rise to frequent disputes over ownership and tenure rights which are further complicated by conflicting jurisdictions between state and federal agencies and the courts. In many areas of the country, such as the Pontal de Paranapanema area in São Paulo state, large landowners have used their political and economic power to annex public land and claim it as their own. State governments and federal agencies are therefore faced with the complicated task of determining ownership, and establishing whether the land is private or public, whether it should be expropriated and used for agrarian reform and whether the current occupier should be compensated. The Federal Constitution of 1988 guarantees the right to property (Chapter I, paragraph XXII) but also states that "property should fulfil a social function" (para. XXIII).<sup>2</sup> Chapter III, Article 184 establishes that, "The Federal Government has powers to expropriate, in the social interest and for the purpose of agrarian reform, rural property which is not fulfilling its social function."<sup>3</sup> Productive property is, however, excluded from expropriation.

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<sup>2</sup> *"A propriedade atenderá a sua função social."*

<sup>3</sup> *"Compete à União desapropriar por interesse social, para fins de reforma agrária, o imóvel rural que não esteja cumprindo sua função social."*

The MST is a legal organization formed in 1985 which campaigns for agrarian reform and which has staged an increasing number of occupations<sup>4</sup> of public and private unproductive land in order to pressurise the federal government to speed up the pace and increase the scope of land reform.<sup>5</sup> The MST does not advocate violence and it has won considerable support for its aims and activities from the Catholic Church's National Conference of Bishops (CNBB), and from the Brazilian public. The MST was awarded a prestigious international award, the King Baldouin prize, by a Belgian foundation in March 1997 for their contribution to social and economic development in Brazil. The organization's finances include donations from foreign donors, including the European Union, partnerships with state agencies and local authorities, and income from the movement's agricultural co-operatives. The MST claims to have 42,000 families around the country camped along roadsides and on unused land. A two-month march of 1,500 MST members to the federal capital Brasília attracted 40,000 supporters in April 1997.<sup>6</sup>

Its activities have brought it into conflict with a number of local landowners and with the government. The Federal Government has, on occasions, demonstrated recognition for the MST as a legitimate land reform movement. However, it has also demonstrated considerable hostility towards the MST and its leadership, for instance José Rainha and others in the Pontal region. In February 1997 the then Minister of Justice, Nelson Jobim, undertook a tour of five states in which land conflicts are particularly acute. He and other representatives of the federal government made statements urging the state governments and the *Ministério Público*, state prosecution service, to take a "harder line"<sup>7</sup> against the MST and those who organize land occupations, whom he characterised as "criminals".<sup>8</sup> He reportedly described the MST as a "political apparatus being used by other groups" which "does not have any commitment to agrarian reform as such".<sup>9</sup>

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<sup>4</sup> The Church Pastoral Land Commission, *Comissão Pastoral da Terra* (CPT), documented a record number of 653 land-related conflicts in 1996, including 398 land occupations, a 172% increase on 1995 (*Conflitos no Campo 1996*).

<sup>5</sup> President Fernando Henrique Cardoso committed his government to land reform in his election manifesto and promised to settle 280,000 families in four years. The government claims to have settled 104,956 families in 1995 and 1996.

<sup>6</sup> The march commemorated the first anniversary of the massacre of 19 landless peasants by military police during an eviction in Eldorado de Carajás, Pará state, on 17 April 1996.

<sup>7</sup> *Estado de São Paulo*, 21 January 1997.

<sup>8</sup> *Correio do Povo*, 6 February 1997.

<sup>9</sup> "aparelho político que está sendo utilizado por grupos.....não tem compromisso com a reforma agrária em si"

A number of MST activists have had other questionable criminal charges brought against them in unrelated cases. The most common charges are *esbulho possessório* (the violent seizure of land belonging to another) and *formação de quadrilha ou bando* (the forming of a criminal gang). In the case of José Rainha and others in the Pontal de Paranapanema region of São Paulo state, these charges have been accompanied by three separate preventive detention orders issued by the local judiciary, all of them overturned in the *Superior Tribunal de Justiça*, Supreme Court of Justice, after *habeas corpus* petitions were filed. The Supreme Court also noted that both criminal charges were inappropriately applied (see section 4 below). Amnesty International has already expressed its concern about the use of such criminal charges against land activists (*Amnesty International Report 1996 and 1997*). Most recently, the organization has taken up the case of the unsound conviction of José Rainha on serious criminal charges.

### 3. UNFAIR TRIAL OF JOSÉ RAINHA

José Rainha was convicted and sentenced in June 1997 to 26½ years imprisonment on two charges of homicide. Amnesty International believes that the charge was politically motivated, that there is no credible evidence against him, and that the trial did not meet international fair trial standards.

José Rainha was found guilty of the intentional homicide, on 5 June 1989, of a local landowner, José Machado Neto, and of a military policeman, Sérgio Narciso da Silva, on the Ipuera estate in the municipality of Pedro Canário in Espírito Santo state.<sup>10</sup> The two men were killed and several peasants injured during a conflict over the occupation of part of the estate by MST members. José Rainha was convicted not of the actual execution of the murder, but of having organized the crime and of having helped the alleged perpetrators to escape.

#### **The trial location and the jury**

José Rainha's lawyers were concerned that he would not receive a fair trial in the locality where the murders took place, due to the influence of the landowners in the area. The

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<sup>10</sup> On 3 June 1989, around 100 families of landless rural workers occupied the 1,500 hectare Ipuera Fazenda in the municipality of Conceição da Barra. There were no reports of violence being used. The estate is reportedly unproductive.

case was tried by a jury, which is used only in the case of homicide in Brazil. In certain jury trials in Brazil which Amnesty International has followed, the jurors have been threatened and the political power of landowners in rural areas is sufficient to intimidate witnesses and bias jurors. The atmosphere of violence and hostility towards land activists in the area also gave serious concern for the safety of the defendant.

In September 1989, Amnesty International raised concerns about a sharp increase in the number of reports of violence and death threats against land activists and other supporters of agrarian reform in the region during the three months following the incident at the Ipuera ranch.<sup>11</sup> Three local land activists were shot dead in circumstances suggesting extrajudicial executions. None of the cases has been fully resolved.

Paulo Damião Tristão was shot dead on 19 June 1989 in Linhares. He had previously denounced police complicity in what he believed to be a campaign of UDR-sponsored violence in the state against rural workers and human rights activists.<sup>12</sup>

Verino Sossai, president of the *Sindicato de Trabalhadores Rurais*, Rural Workers Trade Union, in Montanha, a nearby municipality, was shot dead in his car on 19 July 1989. He had been named by the state prosecutor as a co-author of the murders of José Machado Neto and of Sérgio Narciso da Silva. The trial of those responsible for the murder of Verino Sossai is still pending in the courts in Pedro Canário eight years later and the hired gunman accused of carrying out the murder was poisoned and died in prison in suspicious circumstances. Witness affidavits allege the involvement of members of the state security forces in the killing of Verino Sossai.

Valdício Barbosa dos Santos, the president of the Rural Workers' Trade Union in Pedro Canário, and a candidate for city councillor, was shot dead on 12 September 1989. A judge decreed the preventive detention of a civil policeman and of a gunman who was employed as a security guard by a local doctor and landowner, brother-in-law of the murdered landowner, José Machado Neto.

José Rainha was president of the Rural Workers' Trade Union in Linhares and one of the MST organizers in the state of Espírito Santo prior to the murders on 5 June 1989. At the end of 1988 he survived two attempts on his life. In one, he was grazed by a bullet. Fearing for his safety, the national leadership of the MST transferred him to the north-eastern state of Ceará to organize land occupations. Against the background of these two killings of local trade unionists and the two attempts on José Rainha's life, and

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<sup>11</sup> UA 365/89, AMR 19/20/89, 22 September 1989. Threats were received by the Bishop of São Mateus, members of the CPT, and members of the Linhares Human Rights Commission.

<sup>12</sup> The *União Democrática Ruralista* (UDR), Democratic Rural Union, was founded by landowners in 1985 to defend their interests.

in the light of the hostility of local landowners to José Rainha's political activity with the MST, his lawyers petitioned to have the trial moved from the rural municipality Pedro Canário to the state capital Vitória. The petition was, however, denied.

Pedro Canário's total population is 22,000, of which 120 individuals have been selected by the local judiciary as eligible to act as jurors. Jurors must be "of good social standing." This number represents a tiny percentage of the local adult population, most of whom are rural workers or small producers. The seven jurors were selected at random from a pool of 21, also selected at random from the list of those eligible. The defence rejected three of the jurors, and opposed two more, on the grounds of their personal or family connections with the deceased and to local landowners' interests, arguing that their impartiality could not be assured. Of the seven jurors who eventually found Rainha guilty, a number reportedly had personal connections with the deceased landowner. Two reportedly declared, on receiving their jury summons, that they would find the accused guilty. One juror's family is friendly with that of the deceased, whilst another is married to the President of the Union of Rural Landowners in the municipality.

The United Nations Commission on Human Rights has noted on the conditions for a fair trial that, "The court must be impartial and must base its opinion exclusively on objective arguments and on the evidence presented".<sup>13</sup> There is compelling evidence to suggest that, in the trial of José Rainha, the verdict was influenced by extrajudicial arguments and factors.

Amnesty International is particularly concerned at public comments made by the trial judge, Dr Sebastião Mattos Mazine, after the trial. In a newspaper interview<sup>14</sup> he acknowledged that the jury had apparently been more strongly influenced by their own prior prejudices about the case than by the evidence presented in court. He noted that it was normal in small towns for the jurors to bring to their deliberation their prior knowledge of the crime, "The jury normally votes on what is not contained in the statements, because they know that you can't see truth or lies in the judicial proceedings."<sup>15</sup> He did not consider that the jurors' prior knowledge of the case, prejudices or personal links with the victims would justify transferring the trial to another locality and argued that, "The principle of a jury trial is that the crime should be judged in the place where it occurred. The jury decides on the evidence of the judicial proceedings

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<sup>13</sup>United Nations Commission on Human Rights, *The Administration of Justice and the Human Rights of Detainees*, 25 June 1993, E/CN.4/Sub.2/1993/24/Add.1.

<sup>14</sup> *Folha de São Paulo*, 16 June 1997.

<sup>15</sup> "O jurado costuma votar com o que não está nos autos, porque ele sabe que a verdade ou a mentira não vieram para os auto."

and may even vote for or against the evidence because it does not portray reality."<sup>16</sup> The judge commented that the jury's decision was "a very subjective question".<sup>17</sup> He said, "The jurors, when they sit on a jury, are concerned with their own community and they know much more about the crime than is set out in the trial proceedings."<sup>18</sup> The judge admitted that the jury did not pay much attention to the evidence presented. "We don't know what goes on in jurors' heads. All that tiresome reading out of all the evidence. Jurors don't listen to that, don't pay attention," he is quoted as saying.<sup>19</sup>

### **The prosecution evidence**

Amnesty International is very concerned that José Rainha was found guilty of the two murders despite the failure of the prosecution to present any material evidence of his involvement in the crime, or any witnesses placing him at the scene of the crime. Rainha was charged not with the actual execution of the murders but with their intellectual authorship, that is, of having organized the killings.

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<sup>16</sup> "*O princípio do tribunal do júri é julgar o crime na sociedade onde ele aconteceu. O jurado julga com as provas dos autos e pode até votar contra ou a favor da prova dos autos porque talvez os autos não retratassem a realidade.*"

<sup>17</sup> "*É questão muito subjetiva.*"

<sup>18</sup> "*O jurado, quando senta no júri e se preocupa com sua sociedade, está sabendo muito mais daquele crime do que o que está registrado no processo.*"

<sup>19</sup> "*A gente não sabe o que cabe na cabeça de jurado. Aquela leitura de peças cansativa do processo, jurado não ouve aquilo. Ele não presta atenção.*"

It is not clear why the *Ministério Público*, state prosecution service, decided to charge José Rainha with the murders when the *Inquérito Policial Civil* (IPC), civil police investigation, into the death of landowner José Machado Neto absolved him of any involvement. Completed on 23 June 1989, the IPC concluded that, "In the affidavits there is mention of other names, for example, those of João Ramalho and José Rainha, considered leaders of the MST. However, no responsibility at all falls on them for the crime currently under investigation."<sup>20</sup> The police chief asked for three suspects to be arrested. Four were already under arrest and another had escaped.

José Rainha was not among the eight suspects. Nevertheless, the state prosecutor added José Rainha to the list of those accused and asked for him to be arrested. The local judge decreed the preventive detention of José Rainha and four others on 30 June 1989. José Rainha was arrested in July 1990 in Maranhão and made a statement in Pedro Canário. Following his lawyers' request that he be released, the judge concluded, "I have read through carefully and exhaustively and conclude that there is no evidence to attribute involvement in the crime to the accused, José Rainha."<sup>21</sup> He noted that José Rainha's name had been "tacked on"<sup>22</sup> to the police reports and to the charge list.

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<sup>20</sup> "*Há, nos autos, menção a outros nomes, como por exemplo de João Ramalho e José Rainha, considerados como líderes do movimento dos sem-terra. Entretanto não recaí sobre eles qualquer responsabilidade no crime ora apurado.*"

<sup>21</sup> "*Vi detidamente, exaustivamente e concluí que não existem indícios de autoria atribuído ao acusado José Rainha Júnior a prática do crime.*"

<sup>22</sup> "*entrou de carona*"

The *Inquérito Policial Militar* (IPM), military police investigation, conducted into the death of Sérgio Narciso da Silva, the military policeman killed on the Ipuera estate, and completed five months later, urged that charges be brought against four individuals as authors of the crime, and against another 18, including José Rainha, as co-authors. The report did not specify how these 18 co-authors -- ranging from the Bishop of São Mateus to the truck driver who transported the peasants -- participated in the crime. They were cited in connection with "organizing an armed movement... incitement to warfare.... seizure of land by force of arms... organizing a criminal gang".<sup>23</sup> The military police investigation relied principally on the testimony of the truck driver who took the peasants to the site of the land occupation. His description of the individual he believes to have been José Rainha differs from José Rainha's actual appearance in several important respects. The truck driver's testimony was read out in court but he was not called to testify in person.

The prosecution presented no material evidence of José Rainha's involvement in the crime. Five witnesses had claimed in pre-trial hearings held in the military police headquarters that José Rainha had been present when the two murders occurred. Two prosecution witnesses were present in court but neither was called to give evidence to be cross-examined although their statements from the pre-trial hearings were read out in court.

On the other hand, five defence witnesses testified in court that José Rainha was in Ceará, a state in north-eastern Brazil, some 1,000 km away, at the time of the murders. The witnesses included: Eudoro Santana, state deputy for Ceará and then state secretary for agriculture; Sebastião Jorge Cavalcanti Leandro, a Military Police coronel and responsible for the security of the then governor of Ceará, Tasso Jereisatti; and Fortaleza city councillors Atila Bezerra and Narcilio Andrade; Antônio Ednilo, president of the Rural Workers' Trade Union in Quixeramobim. Witnesses testified that José Rainha was accompanying a visit by a committee of city councillors from Fortaleza, the capital of Ceará, to an encampment in Ceará on 5 June 1989, the day on which the murders occurred. A video tape was produced of the visit, in which José Rainha appears.

In the absence of material proof the prosecution relied on appeals to the jury to convict Rainha essentially on the basis of his membership and activism in the MST. The legal assistants to the prosecution, lawyers hired by the landowner's family, reportedly knelt before the jury, wept and pleaded with them to convict José Rainha "for the sake of God and your children."<sup>24</sup>

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<sup>23</sup> "*articulação do movimento armado... induzindo à guerrilha e posse da terra pela força de armas..organização de bando predisposto ao crime*"

<sup>24</sup> "*pelo amor de deus e de seus filhos, condenem este homen*"

After the trial, the judge commented that, "Neither of the two sides presented evidence which either proved or disproved Rainha's guilt."<sup>25</sup> However, international jurisprudence is quite clear on this point: the accused is considered innocent until proven guilty,<sup>26</sup> and guilt must be fully established. The principle of the presumption of innocence is expressly recognised, without qualification, in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), the American Declaration of the Rights and Duties of Man and the American Convention on Human Rights. The United Nations Human Rights Committee observed on Article 14 of the ICCPR that, "By virtue of the presumption of innocence, the burden of proof falls on the prosecution and the accused enjoys the benefit of the doubt. No-one may be supposed guilty unless the prosecution has proven it beyond all reasonable doubt."<sup>27</sup> The Inter-American Commission on Human Rights further considers that in order to impose sentences based solely on circumstantial evidence, that evidence should be abundant and consistent.<sup>28</sup> Amnesty International believes that the prosecution failed to demonstrate José Rainha's guilt beyond all reasonable doubt, failed to present convincing material proof of his involvement in the crime or abundant circumstantial evidence, and did not restrict itself to objective arguments. In addition, United Nations guidelines on the conduct of prosecutors state that prosecutors should perform their duties fairly, uphold human rights, and thus contribute to ensuring due process and the smooth functioning of the criminal justice system. Prosecutors should not initiate or continue prosecution when an impartial investigation shows the charges to be unfounded.<sup>29</sup>

### Verdict and sentence

After the presentation of the evidence, the jury members were each required to answer yes or no to a number of questions drawn up by the judge in agreement with the defence

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<sup>25</sup> "*Nenhum dos lados apresentou provas afirmativas ou negativas da culpa de Rainha.*"

<sup>26</sup> Article 14, paragraph 2, of the ICCPR reads, "Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law." Brazil ratified the ICCPR in 1992.

<sup>27</sup> United Nations Human Rights Committee *General Observation* No. 13, 1984.

<sup>28</sup> Inter-American Commission on Human Rights, *Informe Nicaragua*, (1981), p. 87, paragraphs 10-12.

<sup>29</sup> *Guidelines on the Role of Prosecutors*, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

and prosecution. The guilty verdict was passed by a majority of four jurors' votes to three in the case of the killing of José Machado Neto, and by five to two in the case of Sérgio Narciso da Silva. The judge accepted their majority decision that José Rainha was guilty of the two murders and sentenced José Rainha to 26½ years imprisonment.

#### 4. JOSÉ RAINHA: A POTENTIAL PRISONER OF CONSCIENCE

Under Brazilian law, anyone sentenced to over 20 years' imprisonment is subject to an automatic second jury trial by a court with a status equal to the one which handed down the original sentence. At present, José Rainha's second trial is scheduled for 16 September 1997, in the same court in Pedro Canário, Espírito Santo, where the original trial was held. He will await this second trial in liberty. His lawyers have formally petitioned once more to have the second trial moved to Vitória, state capital of Espírito Santo. Amnesty International believes that the local hostility to José Rainha and other land reform activists prejudice José Rainha's chances of receiving a fair trial and has called for the trial to be moved to a location where the impartiality of the jury can be better guaranteed.

Amnesty International has stated that if José Rainha's conviction is upheld, he will be adopted as a prisoner of conscience for the following reasons:

- ◆ The criminal charges against José Rainha are politically motivated and form part of a pattern of harassment. Neither police report gives any indication of his specific involvement in the murders, and the prosecution evidence was extremely tenuous. José Rainha had been a prominent MST leader in the area prior to the killings. In the last few years, he has come to national attention for his MST activities in São Paulo state in relation to which he, his wife and other MST members have been subject to other criminal charges, court orders and periods of detention, detailed below.
- ◆ Amnesty International also believes that José Rainha has not used or advocated violence in his role as a leader of the MST.
- ◆ José Rainha was effectively convicted more on the basis of his MST activities in campaigning for land reform than on the basis of convincing evidence related to the charges in question.
- ◆ The trial did not meet international fair trial standards. José Rainha was not presumed innocent in the absence of objective proof of his guilt and did not enjoy the benefit of the doubt. The trial was held in a locality in which the impartiality of the jury could not be guaranteed. The trial judge himself believed the jurors'

decision to have been influenced by prior knowledge and prejudice. He also believes that their verdict was not based exclusively on the evidence presented.

These factors, both singly, and taken as a whole, lead Amnesty International to regard José Rainha as a potential prisoner of conscience.<sup>30</sup>

If the guilty verdict is upheld at the second trial under similar circumstances, that is, if convincing new evidence is not produced by the prosecution and the conditions for a fair trial are not met, and if José Rainha is imprisoned following this conviction, Amnesty International will adopt him as a prisoner of conscience and call for his immediate and unconditional release.

## **5. HARASSMENT OF MST LEADERS IN THE PONTAL DE PARANAPANEMA REGION**

The trial and conviction of José Rainha took place against a background of several years of police and judicial harassment of José Rainha and other organizers of the MST in the Pontal de Paranapanema region of São Paulo state where José Rainha and his family are currently resident. José Rainha has been the subject of no less than 12 separate police investigations over the last two years. On the basis of these investigations, he and others in the MST have been formally charged with two crimes, *esbulho possessório* (the violent seizure of land belonging to another) and *formação de quadrilha ou bando* (the forming of a criminal gang), in relation to his MST activities organizing land occupations. These criminal charges are currently the subject of court hearings. The judge is due to pronounce on these charges in September 1997.

José Rainha and others in the MST have also been the subject of three preventive detention orders issued over the past two years in connection to the two charges above. All three have been upheld in the São Paulo state level courts and then ruled unconstitutional and overturned by Brazil's *Superior Tribunal de Justiça*, Supreme Court of Justice following the filing of *habeas corpus* petitions. The charges themselves have been declared inappropriate in relation to campaigning for agrarian reform.

### **Background to the conflict**

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<sup>30</sup> A prisoner of conscience is a person detained anywhere for their beliefs or because of their ethnic origin, sex, colour, language, national or social origin, economic status, birth or other status - who have not used or advocated violence.

Amnesty International delegates visited the Pontal de Paranapanema region in May 1997 and held talks with São Paulo state authorities, local police, the mayors of two municipalities in the region, a state prosecutor involved in issuing the preventive detention orders and with José Rainha, Diolinda Alves de Souza and other local MST leaders. The mayors, the police chief and the prosecutor all stated that the MST in the region were not armed and that violence, when it occurred in land disputes, was due largely to the practice of local landowners of stockpiling weapons and hiring private security guards and gunmen.

This area, in the south-western corner of São Paulo state, bordering the states of Paraná and Mato Grosso do Sul, has become one of the most tense and violent regions in the context of land conflict. Much of the region formed part of a natural reserve, owned by the state government. However, since the beginning of the century it has been gradually annexed by large landowners and cattle ranchers. The MST has been active in this area for the last few years, camping alongside the highways and occupying land considered to be unproductive, whether state or privately owned. The state government has responded by promoting colonization of state owned land and by carrying out a survey of remaining contested land, expropriating it and compensating the landowners where necessary. The São Paulo state authorities have directed the state police to avoid violence in the resolution of land conflicts. However, there have been violent incidents and shootings when local landowners and hired gunmen attempt to evict squatter peasants without waiting for an eviction order to be implemented by the military police.

### **Criminal charges**

On 27 September 1995 the Civil Police of the Municipality of Sandovalina, a small town in the Pontal region, claimed in a written document that there was a "gang" operating in the region, led by an "intellectual criminal", which was committing robberies and thefts. José Rainha Júnior was identified as the ringleader. The police chief alleged that the area in which the MST are camped resembles a "lawless Far West", that there is a "massive" presence of firearms and that MST members "are instructed to disobey judicial orders and to practice only illegal acts".<sup>31</sup> The police concluded that the organizers of the landless peasants were duping and misleading them: "Simple people, perhaps through lack of education, ignorance and despair, are being instructed and led astray. There is information that the members of the movement have plans at any minute to invade the cities and loot them. The consequences cannot be foreseen. If legal measures are not

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<sup>31</sup> *"Integrantes desse movimento são orientados a não cumprirem ordens legais e a praticarem somente atos ilegais."* Portaria, Polícia Civil do Estado de São Paulo, delegacia de Polícia de Sandovalina-SP.

taken immediately, time will prove me right!"<sup>32</sup> José Rainha is further accused of being accompanied by thugs and of planning to kill a police chief. The police chief urges the judiciary to order the preventive detention of José Rainha on the basis of a charge of "forming a criminal gang", in order to "cure this social cancer",<sup>33</sup> "to avoid bloodshed, to protect families and decent people, in the name of God, let us stop these tools of tyranny, extirpate this iniquity and raise a temple to virtue".<sup>34</sup>

The state prosecution service noted that only José Rainha had been identified in the *portaria*. In order for the charge of organizing a criminal gang to be brought, others had to be named and so he returned the report to the police chief. The police chief added in the names of three other persons most frequently mentioned in police statements as being the leaders of the local MST, and noted the difficulty of identifying the "gang members". The police chief justified the preventive detention warrant arguing that the four represented a threat to public order. On 27 November 1995, José Rainha and three other members of the local MST<sup>35</sup> were formally charged by the local prosecution service with *esbulho possessório* and *formação de quadrilha*. The same day, a local judge issued a preventive detention warrant for all four. On 31 October 1995, Diolinda Alves de Souza and Márcio Barreto were arrested and held in high security prisons in São Paulo until 17 November 1995. They were released following the granting by the Supreme Court of Justice of *habeas corpus* petitions entered by their lawyers.

On 22 January 1996, the local police chief requested a second preventive detention order against 14 members of the MST on the same grounds as above, following a small land occupation at which José Rainha and Diolinda Alves de Souza were not present. The police chief compared the MST to the Italian mafia, and claimed that José Rainha and Diolinda Alves de Souza commanded everything from a distance. On 25 January, the local judge issued a prevention detention order against six MST members.<sup>36</sup>

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<sup>32</sup> "Pessoas humildes, talvez pela falta de cultura, pela ignorância e pelo desespero, estão sendo orientadas e "tele-guiadas" para o caminho errado....Há informações de que os integrantes do 'Movimento' já tem planos, instruções, orientações para, a qualquer momento, ocuparem as cidades, e saquearem-na. As consequências serão imprevisíveis. Caso as providências legais não sejam tomadas imediatamente, o tempo endossará minhas palavras!" *ibid.*

<sup>33</sup> "para curar esse "câncer social vigente" *ibid.*

<sup>34</sup> "Para evitar um derramamento de sangue, para proteger as famílias e as pessoas de bem, em nome de deus, vamos acabar e inibir esses instrumentos de tirania, cavendo masmorras ao vício e erguendo templos à virtude." *ibid.*

<sup>35</sup> Laércio Barbosa, Márcio Barreto, and Diolinda Alves de Souza, wife of José Rainha.

<sup>36</sup> Laércio Barbosa, Márcio Barreto, José Rainha, Diolinda Alves de Souza, Felinto

Four were arrested, as José Rainha was elsewhere in the country and Márcio Barreto escaped.

Diolinda Alves da Souza, was adopted as a prisoner of conscience by Amnesty International in March 1996. Amnesty International believes that Diolinda Alves de Souza was falsely accused and that she was arrested solely because she is married to José Rainha. Her arrest was intended to pressurise the MST to cease its land occupations and to persuade her husband to give himself up for arrest (see UA 68/96, AMR 19/09/96, 8 March 1996, and update AMR 19/10/96, 14 March). On 2 February 1996, the police chief in the case informed her lawyer, in the presence of the judge and prosecutor, that she would be released if José Rainha gave himself up.

Amnesty International has received reports of several land reform activists who have faced politically motivated criminal charges and arbitrary arrests in connection with their activities.

◆ In October 1996, Amnesty International took up the case of Frei Anastácio Ribeiro, a Franciscan priest sentenced to nearly five years' imprisonment on charges related to his peaceful activities in campaigning for land reform (see AI document *Brazil: The criminalization of rural activism: the case of Frei Anastácio Ribeiro*, AI Index: AMR 19/27/96, October 1996). Frei Anastácio Ribeiro was detained on 27 November 1995 in the municipality of Conde in the north-eastern state of Paraíba in connection with the occupation by some 300 landless rural workers of the Fazenda Jacumã e Tabatinga. He is the state coordinator of the Church Pastoral Land Commission, *Comissão Pastoral da Terra* (CPT), a Roman Catholic church organization established in 1975 to monitor land conflicts and encourage priests and lay workers to help the rural poor. Frei Anastácio Ribeiro was charged with *esbulho possessório*, *formação de quadrilha* and with ill-treating children by exposing them to insalubrious conditions in land encampments. The judge held Frei Anastácio Ribeiro responsible due to his CPT work even though he had not been present at the occupation. The judge described the CPT as a "clandestine organization".

◆ On 31 January 1996, four CPT workers (José Lisboa Filho, José Luiz Filho, Maria Lúcia Vieira and Aires Humberto Vieira) and two German students (Selma Donkel and Cristine Seidl) were arbitrarily arrested by the Civil and Military Police following the eviction of 250 landless families from the Acauã estate, in the municipality of Sousa in Paraíba state. They were accused of *formação de quadrilha*.

Procópio and Claudemir Marques Cano.

The four were released on 12 March 1996 following the filing of *habeas corpus*. The Supreme Court also set bail for the accused. The Supreme Court noted, in its judgement, that the use of the criminal charge of *esbulho possessório* in the context of land reform activism was inappropriate: "The conduct of a person engaged in *esbulho possessório* is substantially different from someone with an interest in agrarian reform". The judges noted that the activities of the accused had to be understood within their social context. They commented that the failure of the government to implement the commitment to agrarian reform contained in the 1988 Constitution gave those campaigning for agrarian reform a "right" or at least a legitimate "interest". They also noted that organizing groups for the purpose of pressurising the government to implement agrarian reform cannot be described under the rubric of "organizing a criminal gang", that is, for the purpose of committing criminal acts. One judge commented "I cannot see substantial evidence, in the case in question, of the existence of the crime of forming a criminal gang, that is, a crime in which three or more persons join together in order to commit crimes."<sup>37</sup> The *habeas corpus* was granted, among other reasons, in order to protect the constitutional principle of the right to be presumed innocent until proven guilty and because the accused posed no threat to public order.

The third preventive detention order was issued on 24 February 1997 against five members of the MST.<sup>38</sup> A judge issued the order on the basis of police allegations that they had been ringleaders of an MST occupation of the São Domingos ranch on 23 February and thus were implicated in criminal activities. During the occupation, a number of landless workers were injured in a conflict with individuals associated with the landowner. The landowner's son and four hired gunmen were arrested the same day by the civil police. They were charged with shooting at the landless workers but were subsequently released. The judge claimed that four of the MST members named in the preventive detention order had also broken the terms of the bail set by the Supreme Court. Márcio Barreto was arrested and released only on 9 April 1997, following the filing of a *habeas corpus* petition.

## 6. CONCLUSIONS

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<sup>37</sup> "Não vislumbro, substancialmente...no caso concreto, demonstração de existência de crime de quadrilha ou bando, ou seja, infração penal em que se reúnem três ou mais pessoas com a finalidade de cometer crimes." *Habeas Corpus* No. 4.399-SP Voto Vogal fl.02.

<sup>38</sup> José Rainha, Márcio Barreto, Laércio Barbosa, Claudemir Marques Cano and Felinto Procópio.

Amnesty International is very concerned that groundless criminal charges and preventive detention orders are apparently being used against José Rainha and other members of the MST in a politically motivated manner, in order to harass and criminalize land reform activists and advocates. Following the conviction of José Rainha on false murder charges, the organization will adopt him as a prisoner of conscience if his conviction is upheld at the second trial on 16 September. The organization believes that he was convicted primarily on the basis of his beliefs and political activity in favour of agrarian reform.

The organization also considers that the trial of José Rainha on 10 June 1997 did not meet international fair trial standards. The trial was held in a locality in which the impartiality of the jury could not reasonably be assured. The basic principle of the presumption of the innocence of the accused was not respected. The accused's political activities in the MST were permitted to carry more weight than material evidence in the arguments presented by the prosecution and in verdict formed by the jury. His conviction must also be viewed in the context of several years of harassment by the police and judiciary. The trial judge's declarations about the prior prejudices of the jury in Pedro Canário raise serious doubts with respect to the conduct of the trial, the soundness of the verdict and the impartiality of a second trial held in the same locality. It is possible that the judge's declarations, made before the legal proceedings against José Rainha have been concluded, may prejudice the judge and jury in the second trial.

Amnesty International urges the state authorities of Espírito Santo to authorise the transfer of the second trial to a location where the impartiality of the jury can be better guaranteed. The organization urges the judiciary in the state of Espírito Santo to guarantee that the second trial meets international fair trial standards.

The organization calls on the federal authorities to ensure that arbitrary detention and politically motivated criminal charges are not used by the judiciary and the state prosecution service as a means of curtailing the legitimate and peaceful political activities of land reform activists and members of the MST.