

The Landless Rural Workers' Movement and its Legal and Political Strategies for Gaining
Access to Law and Justice in Brazil¹

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One day Mahatma Gandhi was asked what he thought of Western democracy. He replied: "it would be a good idea". If Gandhi were able to return to earth today to tell us what he thought of the rule of law and access to justice, he would most certainly respond in the same way. In fact, in most countries of the world, if the notions of rule of law and access to justice were taken seriously, there would be social revolution. By privileging the dominant elites to the detriment of the vast majority of citizens, the law, and the judicial system in particular, have often been used to consolidate and legitimize social regimes that are manifestly unjust.

A dispassionate analysis of the policies used by Western nations and multilateral organisations in the last thirty years to promote rule of law and access to justice shows that these policies have done little or nothing to reduce social inequality and exclusion. Whether by coincidence or not, inequality (between rich and poor countries, and also between different social groups in particular countries) has increased significantly over this period.

However, the law and the courts, which naturally reflect society and the various conflicts being played out in it, are themselves full of internal contradictions. This means that, in certain very specific situations, they may be used successfully by oppressed and excluded social groups to further their claims. In these cases, the rule of law and access to justice may in fact play an important role in bringing about greater social justice (conceived as real, rather than merely formal, equality, between citizens).

Our research shows that there are basically two requirements for this to take place. Firstly, the excluded groups need to be organized socially and politically into social movements or nongovernmental organizations; and secondly, innovative legal and judicial strategies are required when dealing with the courts, accompanied by political pressure upon organs of State and upon the courts themselves.

In this study of the landless rural workers in Brazil (which is one of the most unjust countries of the world as regards land distribution), we show how the militants of one of the most powerful social movements in Latin America, the Landless Rural Workers' Movement (the MST), have been treated by the courts in the various lawsuits in which they have participated as either defendants or plaintiffs.

I. Towards a democratic conception of access to justice in Brazil

In order to understand the options available to social movements engaged in a struggle for rights, we need to look more closely at the concept of access to justice. Only if the phenomenon is understood in broader terms, going beyond mere access to jurisdiction and legal action, will the initiatives involved in the creation of new legal interpretations and applications be understood to be legitimate and necessary.

In their work *Access to Justice* (1978-79), Mauro Cappelletti & Bryant Garth identify three distinct phases in the definition of access to justice. According to them, the concept has changed from a more formalistic and individualistic 18th century-style interpretation to one which emphasizes effectiveness and the social importance of the right to access to justice.

During the first phase, 'Legal Aid' systems were instituted for the poor in order to provide those on low incomes with quality legal advice free of charge. However, this system was ineffective, given the shortage of lawyers and high costs involved. In the second phase, the focus was on *class actions*, as a means to defend various rights. In this context, the right to bring legal proceedings was extended, and the State could now intervene through public prosecutors or the Ministry of Justice. Finally, the third phase of access to justice has included judicial and extrajudicial advocacy, through private or public lawyers, and focuses upon the institutions, mechanisms, people and procedures used to resolve or prevent disputes in modern societies. The techniques used in the first two phases were not abandoned at this point; rather, they were treated as different options for improving access (Cappelletti & Garth, 1978-1979).

From these approaches identified by Cappelletti & Garth, it becomes clear that the Judiciary has a central role to play in this matter; for *courts of law can ensure that individual and collective rights are effectively enforced with the objective goal of dispensing justice* (Sadek, 2001). Underlying this approach is a depoliticized notion of social change according to which law, conceived as an autonomous normative system, oriented exclusively by the *rule of law*, reduces the complexity of social conflicts and ensures the predictability of individual legal relations. It is this conception that has presided over judicial reform policies throughout the world in the last twenty years. Indeed, the legal system has never before had such a powerful role to play as it has today. But this protagonism is not oriented towards furthering social justice. Instead, it assumes that societies are based upon the primacy of Law, and that they do not function properly without an effective, efficient, fair and independent legal system. Consequently, great investment is necessary for this to occur, by dignifying the legal and judicial professions, creating organizational models that make the legal system more efficient, procedural reforms and the training of magistrates and administrative staff (Sadek, 2001).

If, however, social change is conceived as a political process whose aims is the gradual inclusion of marginal groups and the construction of more substantial forms of social justice, then law should be perceived as a fairly important component of this political process, and one which reflects its contradictions. It would thus have to be conceived as a semi-autonomous open system, whose function would be not only to resolve disputes but also possibly to create them. It would therefore operate as a site for both the reduction of complexity and for the increase of social complexity. Although the law and judicial systems have traditionally been used by the dominant classes to protect their privileges, they are nevertheless not immune to social struggle. For this reason, they may, in certain circumstances, be used by oppressed or excluded social groups to combat those privileges and struggle for greater social justice (Sadek, 2001). Whenever that happens, access to justice may be an important part of the "*democratic revolution of justice*", oriented towards the democratization of the State and society, either through the state legal and judicial system, or via new instruments and experiences such as those that have arisen in Brazilian society, as this study describes (Santos, 2007).

In the case of Brazil, redemocratization and the new Constitution have given greater credibility to the use of the judicial channel as an alternative way of winning rights. And "*people who are aware of their rights use the courts to protect and implement those rights whenever the State's social or development policies are under threat*," (Santos, 2007). However, such high expectations often leads to great frustration when the legal system is

unable to fulfill them.³ To overcome this problem, the justice that is accessed needs to be open to change, capable of responding to the suppressed needs in society generated by the injustices resulting from the system. For this, the legal system needs to assume its share of responsibility in the resolution of conflicts, “*breaking out of its isolation and liaising with other organizations and institutions in society that can help it to assume its share of responsibility.*” (Santos, 2007).

One of the important aspects to be taken into account in this democratic revolution of Justice to occur is the longwinded nature of legal suits. However, it is important to remember swift justice is not always good justice; speed, therefore, should not be seen as an end in itself (Santos, 2007). As Boaventura has pointed out, an “*innovative interpretation (of the law) that goes against routine but is socially more responsible may require more time for study and reflection*” (Santos, 2007). Thus, from the point of view of the democratic revolution for justice, speed is not enough; it has to be associated with an improvement in the quality of the justice, with greater social responsibility, so that it can become a citizens' justice.

However, as we have said, access to justice does not consist merely of formal access to the judicial system. The contemporary State does not have an exclusive monopoly on the production and distribution of law. Contemporary societies are legally and judicially pluralistic. In sociological terms, various legal and judicial systems circulate within them simultaneously, and indeed, the State legal system may not always be the most important for the everyday regulation of most citizens' lives. Thus, informal community techniques and actions need to coexist with the central one in the administration of justice, within a perspective of legal pluralism. There is a need for new conceptions, new concepts of property law, without which there can be no social justice. And, within this domain, it is necessary to recognise the role of those that struggle for those rights, ranging from social movements to agricultural ombudsmen.

To this extent, then, the actions of social movements and organizations with regards to the judiciary occur within the “counter-hegemonic field”, that is, the sphere in which the law and its courts are perceived as important tools for the vindications of rights and aspirations to justice, against the present unjust social system. A democratic revolution of justice therefore requires a new legal and judicial paradigm, which would take as its starting point a new conception of access to the law and to justice. This would require, amongst other things, thorough procedural reforms, new mechanisms and protagonisms in access to justice, a revolution in the training of magistrates, and a legal culture that is democratic and non-corporative.

It is also important that each of these aspects is attentive to the vast range of injustices (socioeconomic, racial, sexual, ethnocultural, cognitive, environmental, historical, etc) currently existing in our society. Only in this way will the legal system be able to take its share of responsibility in solving the problems caused by them and in implementing social policies based upon an effective respect for human rights.

³ Idem. Op. Cit.,p.21.

II. The land question: resistance and struggle for access to law and justice

A strong policy of access to law and justice necessarily requires a new legal and judicial paradigm that is committed to the overcoming the different dimensions of social injustice. In Brazil, many of these injustices are linked to the issue of land reform, which has become a site of confrontation for different individual and collective conceptions of human rights and property.

There are three main groups engaged in the struggle for land, which operate both separately and in conjunction: the indigenous movement; the Quilombola (ex-slave) movement, and the landless rural workers movement, particularly the Landless Rural Workers' Movement (MST). As we shall see below, each of these groups has a different conception of 'land' for historical reasons. For example, the MST's struggle for land reform takes place within the historical timeframe of the modern state; the Quilombolas operate within the timeframe of slavery; while the indigenous groups (whose struggle for territory is an expression and condition of cultural autonomy) take colonialism as their reference.

In the next section, we shall briefly analyze the historical context underlying each of these groups' struggles and their claims as regards access to law and justice.

II. 1. The struggle for indigenous land

The indigenous territories (TIs) in Brazil today cover only 109,641,763 hectares, which represents 13% of Brazilian territory. Of that total, 108,087,455 hectares, or 98.61% of all the indigenous lands in the country, are located in "Legal Amazon" states. The remaining hectares (1.39%) are scattered across the regions of the Northeast, Southeast, South and Mato Grosso do Sul⁴.

The fact that most of the indigenous territories are concentrated in the Legal Amazon is explained by the fact that colonization took place earlier and more thoroughly in the rest of the country, leading to the decimation of many communities and the confinement of survivors to small tracts of land. This was what happened to the Guarani, for example, who had formerly inhabited most of the Mata Atlântica from the north of Rio de Janeiro State to the north of Argentina, including most of southern Brazil, the Centre-West area and the eastern region of Paraguay. The Guarani homeland of Aldeia Jaraguá is only two hectares, which means that it is impossible for the Indians to live off the land.

At present, most of the Guarani people (the Kaiwoá and Ñandeva) of Mato Grosso do Sul live in eight indigenous areas which were delimited between 1920 and 1930 by the now defunct Indian Protection Department. The territories were planned to have an area of 3600 hectares each, but seven are smaller than that. Guarani resistance is famous; the group has a strong cultural identity and maintains its native language, even in cases of extreme contact with non-Indians (such as occurs with the small Guarani communities that live in the city of São Paulo).

⁴ This data was taken from the databank of the Socioenvironmental Institute, which monitors the demarcation of the Indigenous Territories on a daily basis. Up-to-date information about each of the Indigenous Territories is available on the organization's website:

http://www.socioambiental.org/pib/portugues/quonqua/ondeestao/sit_jurid.html

The resistance put up by all indigenous peoples explains why indigenous rights have gradually been given more attention in successive editions of the Brazilian Constitution. Rosane Lacerda (2007) documents the indigenous movement on the eve of the Constituent National Assembly:

In order to sensitize the members of the Constituent Assembly, the Indians had to be physically present in the National Congress at all times. Until then, very few of them had a clear idea about the legal, political and administrative structures of the Brazilian State; indeed, many did not have the vaguest idea what a municipal government was, much less a Constitution or a Constituent National Assembly. Most, however, could state with conviction: the great white man's law was to be written by politicians "over there in Brasilia", and if the Indians could not actively participate in that process, then they would fight so that the white man's law would take account of the opinion and will of the indigenous peoples for the first time in 500 years.

As José Geraldo de Sousa Junior (2002) points out, the emergence of the notion of the "collective subject" in sociology has also sustained the category of "collective subject" in law, and operates "*according to a process by which social deprivation is perceived as the denial of a right, provoking a struggle to attain it*". Perhaps this is the theoretical explanation for the important participation of the indigenous leaders in the constituent process, which culminated in the promulgation of the Federal Constitution of Brazil in 1988.

In fact, the new Brazilian Constitution implemented a new legal configuration, one which was no longer restricted to guaranteeing individual rights of a purely economic and property nature. It put an end to the conservative assimilationist vision, according to which the Indians would gradually integrate into national society until they ultimately ceased to exist as indigenous peoples, and instead, a non-integrationist paradigm began to take shape, based on interaction between the various cultures in a society that was markedly plural and multiethnic in nature.

Article 231 of the new Constitution recognized the right of the indigenous peoples to have their own social organization, customs, languages, beliefs and traditions, and also their original rights over the lands that they had traditionally occupied. As José Afonso da Silva (1993) explains, the term 'traditionally' refers not to a span of time, but rather to a traditional mode, i.e. specific customs through which the indigenous occupation developed. This acknowledgement of difference, as regards the indigenous peoples, along with the perception of Brazil as a multicultural society, affirms a plural conception of law, whose sources are extended beyond the state. Therefore, the protected rights of the Indians now reflect the indigenous vision of their land, rather than the view of the colonizer, as had been the case before with the delimitation of the indigenous areas.

This is the principle of cultural diversity which, as Paulo Machado Guimarães (1999) observes, brings immediate effects as regards the validity of acts performed by public and private bodies:

All normative, administrative, judicial or private acts may be validly applied to an indigenous people provided that they do not disrespect their property and cultural values. (...) From this imposition of respect emerges a basic principle for relating to indigenous peoples: the principle of respect for ethnic and cultural diversity.

Article 231 stipulates that indigenous territories shall include not only the permanently inhabited areas (considered equivalent to the dwellings of the non-indigenous population), but also those areas used for productive activities, and which are therefore essential for the preservation of the environmental resources necessary for their wellbeing and physical and cultural reproduction.

The new criteria expressed the victories won by the indigenous movement in the constituent process, and legitimized indigenous territories in Amazonia, such as Yanomami⁵, Alto Rio Negro⁶, Raposa Serra do Sol⁷ and Trombetas/Mapuera⁸. Some of the Guarani indigenous territories, mentioned above, are presently under review, to ensure that they comply with constitutional parameters relating to the customs and traditions of each indigenous people. After indigenous rights had been incorporated into the Federal Constitution, a new struggle was announced: the fight to get the principle of cultural diversity incorporated into the Brazilian social and legal imagination. This had never been an easy position to sustain throughout the country's history; indeed, the struggle for it had begun as physical combat in the 16th century, and was then gradually transformed into a "paper war" (as the Kaiabi Indians call the legal struggle for the return of their traditional homelands).

In the 1990s, following the promulgation of the new Constitution, the federal government had to demarcate the indigenous territories within five years. The Executive Power, through the National Indian Foundation (FUNAI), the Ministry of Justice and the President of the Republic, were the main organs to be pressurized by the indigenous and indigenist movement, which used a variety of methods (including legal channels) to try to enforce the Constitution.

Today, the Judiciary plays a more important role, and is now the privileged site of struggle for the affirmation of the principle of cultural diversity and access to justice. Now, almost all of the indigenous land demarcation processes result in lawsuits, as private individuals with title deeds to property within the boundaries of the indigenous territories attempt to temporarily paralyze and definitively annul FUNAI's demarcatory procedures. However, despite what it may seem, the problem is not the judicial settlement of indigenous territorial questions. As Déborah Duprat (2006) points out,

Although the Judiciary has had an important role to play in stipulating theoretical boundaries with regards to demarcation, there nevertheless persists a profound lack of comprehension as regards the nature of the indigenous territory and the legal repercussions arising from it.

The Federal Supreme Court has now a crucial opportunity to demonstrate whether or not this lack of comprehension still persists, in its readiness to judge the various suits that question the boundaries of the Indigenous Territory of Raposa Serra do Sol. Extending across an area of 1747 million hectares, Raposa Serra do Sol is inhabited by 16 thousand Indians of the Macuxi, Tauarepang, Patamona, Ingarikó and Wapixana ethnic groups,

⁵ The Decree of 25/05/1992 ratifies the demarcation of the Yanomami indigenous territory as cm 9,664,980 ha.

⁶ The Decree of 14/04/1998 ratified the Indigenous Territory of Alto Rio Negro, giving it an area of 7,999,380 ha. It also recognised all the islands located in the Rio Negro between the mouth of the River Uaupés and the mouth of the River Xié as indigenous territories. The decree revoked Decrees 99.094 to 99.104 of 09/03/1990, which had ratified different indigenous territories that were laid out in a discontinuous fashion.

⁷ The Decree of 15/04/2005 ratified the boundaries of the Indigenous Territory (TI) of Raposa Serra do Sol and defined Monte Roraima National Park as Union public property, with a dual function of conserving the environment and enforcing the constitutional rights of the Indians. It established that Parna would be jointly administered by FUNAI, IBAMA and the Ingarikó community. Finally, it established that the Armed Forces would be used to defend national territory and sovereignty, while the Federal Police Department of the Ministry of Justice would guarantee public order and safety, and protect the constitutional rights of the indigenous peoples in the Indigenous Territories.

⁸ Ministry of Justice Administrative Rule No. 1806 of 16/09/2005 declared the Indigenous Territory of Trombetas/Mapuera to be under permanent indigenous possession, and established that the territory would be administratively demarcated by FUNAI with an area of 3,970,420 ha.

distributed across 164 villages. Demarcation of the Territory began in the 1980s, prior to the present Constitution, and continued for 30 years, until the present president ratified its boundaries in 2005, stimulating diverse interests in its decharacterization.

In the recent injunction proceedings 2009/2008, the plenary session of the Supreme Court suspended the Federal Police's *Upatakón 3* operations, which involved the removal of all non-Indians from the Indigenous Territory of Raposa Serra do Sol. The current president of the Supreme Court, Minister Gilmar Ferreira Mendes, declared in the judgement session that there had been a *conceptual error* in the continuous demarcation process of the Indigenous Territory, which was so extensive that it could jeopardise State autonomy. The minister suggested that the best model would be an insular one, as had already been tried out and constitutionally transcended with the delimitation of the Guarani Indigenous Territories. These declarations supported the arguments put forward by Senator Augusto Botelho, who brought Popular Action No. 3388 (the first of at least four to be judged in May of the current year), causing justifiable fear and astonishment amongst the indigenous communities.

The indigenous movement has, till now, been crying upon deaf ears in its appeals for justice. *The history of Roraima has taught us that the fractioned demarcation of indigenous lands encourages all kinds of invasions and increases the number of conflicts, condemning ancient cultures to extinction*⁹. Discontinuous land demarcation encourages incursions onto the territory by mineral prospectors, lumberjacks, livestock rearers, agroproducers, etc, and the expansion of ranch boundaries, which in turn bring the extensive felling of trees, use of agrotoxins, pollution of rivers and epidemics. It also hinders the social and political organization of the indigenous peoples, ultimately jeopardizing their cultural survival, given that their collective memory and history is invested in the land.

The Supreme Court now has a great opportunity to put these things right. However, if the president persists in his reasoning, the result will be not a conceptual error but a historical and constitutional error for the indigenous and Brazilian communities. The case concerns not only the demarcation of the Raposa Serra do Sol Indigenous Territory but may also affect the very principle that raises the Indians to the condition of indigenous peoples and identifies cultural diversity as one of the great treasures of Brazilian society.

II. 2. The Quilombola Lands

The Quilombola question, like the indigenous one, is today also an important and controversial issue. It too indicates the need for a non-individualistic conception of territory and a new approach to property law and forms of social justice.

The Quilombolas are powerful icons of black resistance in Brazil and have provided a counterpoint not only to the cruelty of traditional colonialism, where violence was a fundamental form of interaction between master and slave, but also to the neocolonialist enterprise, which marginalises and excludes the black population (Melo, 2007).

In formal Brazilian history, the Quilombos were the communities created by runaway slaves, which had a strong ethnic identity. In 1740, the Overseas Council defined the Quilombo in this way: "*any place that serves as a dwelling to a group of more than five*

⁹ Website of the Roraima Indigenous Council <http://www.cir.org.br>.

escaped negros, and which is not properly developed, with no huts built or even pilões” (Schmitt, Turatti & Carvalho, 2002).

Historiographic studies have shown that Quilombos appeared all over Brazil during the slavery period. These slavocracies, with their diverse lifestyles, established a relationship with the land based upon common ownership, a situation that has continued into our days (Melo, 2007).

Despite this, many studies from the 1950s and '60s assumed that the Quilombos were a phenomenon from the slave-owning past, no longer in existence (Melo, 2007). Fortunately, the Quilombola question has recently acquired much greater visibility, having been raised by the black movement in the 1970s as part of the fight against racial discrimination. It was in this context that the Quilombos began to be perceived as icons of black resistance and evidence of the need for a new social order (Melo, 2007).

The powerful black lobby drew up a number of proposals during the 1st Meeting of Rural Black Communities in 1986¹⁰, which resulted in the approval of Article 68 of the Temporary Constitutional Provisions Act (ADCT) of the Federal Constitution of 1988, a measure designed to provide reparation to the blacks for historic debt owed to them by Brazilian society. The article states:

The remaining members of the Quilombo communities are hereby recognised as the legitimate owners of the lands they occupy, for which the State shall issue the respective title deeds.

The debate about how to define a Quilombola community intensified after 1988. At that time, the term was considered by many to refer only to those lands occupied by the descendants of runaway slaves.¹¹ However, the ensuing debate revealed that those communities were also intimately bound up with an ethnic and territorial identity.¹²

Subsequently, with Decree No. 4.887 of 20th November 2003, the term was redefined. Now, any ethnic-racial group that *defined itself* as the remains of a Quilombo community was recognised as such. The decree also regulated the procedure for the identification, recognition, delimitation, demarcation and ownership of the lands occupied by remaining Quilombo communities.

For the purposes of this Decree, the remains of Quilombo communities are defined as those ethnic-racial groups which consider themselves to have a particular historical background and a specific relationship with the land, with the presumption of black ancestry, related to the resistance to the historical oppression suffered. For the purposes of this Decree, the remains of Quilombo communities shall be characterised on the basis of self-definition and testimony provided by the community itself.

The importance of this self-recognition is not only that it prevents external definitions that are frequently pejorative, but also in that reaffirms Quilombola identity. The identification process is not fixed, however; rather, these are 'identifications in progress', as Boaventura de Sousa Santos states (2000). Thus, we could think that, in a particular

¹⁰ MELO, Paula Balduino Idem.

¹¹ SOGAME, Maurício. Available at: <http://www.uff.br/posgeo/modules/xt_conteudo/content/campos/mauricio.pdf>. Accessed on: 29th April 2008.

¹² Idem.

historical context, groups have highlighted certain cultural traits that they believe relevant to achieve their objectives.¹³ For this reason, in the struggle for land, the blacks evoke a historic process of resistance in the past in order to achieve their goals in the present.

The black rural communities' demands for land regularization have been important in this process. The National Institute for Colonization and Land Reform (INCRA) initially took responsibility for this, but were unable to consolidate the process, eventually transferring responsibility to the Ministry of Culture in 1999, via the Palmares Cultural Foundation. In 2003, with Presidential Decree 4887 of 20th November, this function passed back to INCRA, where it remains today.

According to Paula Balduino, the political activism of rural black communities developed first in regions where the communities' property rights were first to be acknowledged. These included the region of Trombeta in the State of Pará, and the Quilombo of Rios das Rãs in Bahia. Another important victory occurred in 1996 at the 2nd Meeting of the Rural Black Communities, which set up the National Joint Committee of Quilombola Rural Black Communities (CONAQ) (Schimitt, Turatti & Carvalho, 2002). With the constitution of this Committee, the Quilombola movement gained greater national visibility, to the extent that it is now recognised as one of the most active branches of the black movement in Brazil today (Schimitt, Turatti & Carvalho, 2002),

This greater visibility has highlighted the Quilombola identity, distinguishing it from other groups in society and overcoming the invisibility and social exclusion to which it had been subjected for many years (Schimitt, Turatti & Carvalho, 2002). In assuming this identity, these individuals have recognised themselves as black, thereby redefining the term by giving it positive connotations, valuing cultural traits and constructing a strong relationship with the land (Schimitt, Turatti & Carvalho, 2002).

For all these reasons, it is easy to see why massive property conflicts have arisen involving Quilombola (or indigenous) communities. For the Quilombolas, land has an inestimable *use value*, which is superimposed onto its *exchange value* claimed by the economic power. For these communities, the value of land is intimately connected to the satisfaction of their social, cultural, environmental and economic rights, including the right to cultivate plantations for subsistence, to construct dwellings, to hold religious services, and express their culture through other activities.

The Quilombola communities have also suffered constant expropriations of their territories by land grabbers ('grileiros') and powerful landowners, a situation which not only threatens to put an end to their way of life, but also causes the dispersion of the group and their displacement to shanty towns (Schimitt, Turatti & Carvalho, 2002). This is what happened with the community of Amaros, where around 400 people, residents of the counties of Paracatu/MG, Luziânia/GO, Cristalina/GO and Vazante/MG, were expelled from their lands. Those families are descendents of the freed slave Amaro Pereira das Mercês, who bought the land that this group claims. In these cases of expropriation, organizations and associations that work with the Quilombolas often provide guidance to communities that are frequently unaware of their rights (Schimitt, Turatti & Carvalho, 2002). The Amaros community is still awaiting the legal decision.

Therefore, despite the great legislative advances that have taken place internationally, nationally, and on state and municipal level as regards Quilombola rights to territory, there are still many barriers to be overcome in order to ensure that they retain ownership of their

land. In addition to the difficulties cited above (the prejudice and powerful influence of the large landowners and their means of communication), there is also the administrative-bureaucratic problem of justice, which is frequently long-drawn-out, meaning that the Quilombolas often have to wait years to find out if their lands are to be granted to them or not (Schimitt, Turatti & Carvalho, 2002).

In Brazil, according to data provided by the Ministry of Agricultural Development (MDA), there are 743 remaining Quilombola communities which together lay claim to an area of 30 million hectares (Schimitt, Turatti & Carvalho, 2002). The MDA admits that these figures may be underestimated and that unofficial estimates suggest more than 2000 communities (Schimitt, Turatti & Carvalho, 2002). CONAQ leaders, for their part, claim that there are around 5000 Quilombola communities in existence.

The Quilombolas are now important protagonists in their own history, active political subjects in defense of their rights. However, their struggle is still ongoing, and many more conflicts and advances are necessary before their rights to their land are assured.

II. 3. The rural workers' struggle

As we have seen, the struggle for justice and rights in the Brazilian countryside was indistinguishable from the indigenous and Quilombola struggles until the middle of the 19th century. However, since Colonial times, many people had been eking out a living as small-time farmers, and in doing so, helped ensure the supply of food for Brazil (for the large-scale producers produced nothing more than sugarcane). For example, in the 17th century, a number of cities and merchants in the Northeast traded with the Quilombo dos Palmares in order to get basic foodstuffs such as beans and oranges.

Small-time family farming intensified at two subsequent moments. The first was during the goldrush of the 18th century, when townships sprang up all over the Southeast of the country, generating the need for supplies. The second occurred after Independence, when Brazil was going through a period that agricultural jurists call the "Ownership Regime": no longer bound by Portuguese legislation, the country was experiencing a legal vacuum, which resulted in land seizures throughout the territory. This situation only came to an end with the publication of Law 601 of 1850.

However, the first major conflicts involving rural workers only really started to appear after the end of the 19th century. The idea of land reform had begun to attract attention in progressive circles since the abolition of slavery¹⁴. But it was an event that took place in 1893 that is generally considered to mark the beginning of one of Brazil's most audacious peasant movements. This was the terrible Canudos massacre, one of the worst in Brazilian history, which followed the founding of the Belo Monte agricultural settlement in the northern region of Bahia.

With the end of the Old Republic in 1930, new social actors began to appear in the Brazilian countryside, strongly influenced by the Communist Party, which had achieved

¹⁴ The abolitionist struggle, mostly in the 19th century, was linked to a struggle for land reform: "For whosoever studies social phenomena, there is no greater crime than the monopoly of land; this is the main factor underlying slavery and serfdom (...); this is the satanic producer of misery and all the horrors and despair that today afflict the old and the new worlds" André Rebouças, Brazilian abolitionist in a letter to Joaquim Nabuco, 12th March 1897.

national projection through its leader, Luís Carlos Prestes. This movement helped bring about a transformation in the national debate about the countryside with regard to land reform. The issue also gained constitutional protection in the Democratic Constitution of 1946 (Article 147), which provided the first mechanism for sanctions to be imposed on unproductive properties, which would then be expropriated for land reform. However, it took decades before this mechanism was regulated on the infraconstitutional level, and put into effect. Amidst this issue, another important movement arose in the context of the Brazilian land struggle, namely the Rural Leagues, which had great influence in the Northeast of the country.

Then, with the military coup of April 1964, any rural workers found to have any connection with the Rural Leagues were decimated by the dictatorship. Immediately prior to the radicalization of 1968 (Institutional Act No. 5), there were no rural workers' organisations of significant size left anywhere in Brazil.

In 1984, when the military dictatorship came to an end, the Landless Rural Workers' Movement (MST) appeared as an autonomous organization dedicated to the struggle for land reform. Thereafter, the whole of Brazilian rural history was condensed in the story of this Movement, which soon acquired national scale. Indeed, it radically influenced the 1988 Constitution, which includes a chapter devoted to land reform. Today, after more than 20 years in existence and a whole series of victories under its belt, the MST has become almost synonymous with the struggle for land reform. Indeed, the movement's political and legal strategies have been shown to be both effective and efficient in the struggle for law and justice with regards to the urgent question of land reform in Brazil.

III. The Landless Rural Workers' Movement history and resistance in the struggle for land reform in Brazil

The Landless Rural Workers' Movement (MST) appeared at the end of the 1970s with a series of occupations of rural estates. The aim was to resume the struggle for land reform, which had been forcibly repressed during most of the military regime (Singer, 2002).

According to Cristiane Arruda (2007), the history of the MST may be divided into three distinct periods. The first, from 1979 to 1988, represents the moment when the Movement appeared for the first time in Southern Brazil. This was a period of structuring and definition, organized around the motto "*land for those who work it*". The main claim was the long overdue issue of land reform in Brazil. Although the struggle for land reform had got under way in the 1950s, it had disintegrated during the military dictatorship and only gained new wind in the 1980s, a decade marked by intensive rural exodus and the consequent increase of poverty in the large cities. Looking for an alternative to this process (Brazil in fact ranks second in the world as regards unequal land distribution, with the Gini index registering 8.54 in 2006)¹⁵, the Movement began to fight for agrarian reform based upon a fairer distribution of land.

In the second period, from 1988 to 1995, the Movement began to grow stronger on the national level and became aware of the need to adopt political strategies for struggle. Its

¹⁵ Information acquired by the MST from the United Nations Organization (UN), December 2007.

motto now became “*occupy, resist, produce*”, and its claims were extended beyond the question of land redistribution to include agricultural credit, education, leisure, access to technological and scientific advances, and health, with a view to providing their members with a dignified lifestyle (Arruda, 2007). In this period, there was an increase in the number of associations in rural settlements and the organisation of cooperatives to systematise production (Singer, 2002).

Finally, the third period, which started in 1995, has been marked by the proliferation and consolidation of agricultural cooperatives within the settlements. There has also been a growing awareness that there are other obstacles to land reform besides the large estates, such as the transnational agribusinesses, which concentrate on monocultures such as soya, coffee, sugar cane and eucalyptus (Singer, 2002). The MST's response has been to advocate food sovereignty, by encouraging small-scale family farming and giving priority to national and local markets, thereby ensuring the sustainability of farmers and the production of food for the Brazilian population (unlike agribusiness, which aims predominantly at the foreign market). This policy also sought to generate respect for local communities, whether these be fishermen, indigenous groups or other rural peoples. The MST has always shown an interest in environmental matters and taken care with its conservation. With increased deforestation and the risk of global warming, the Movement has given special attention to this question. For this reason, its settlements have promoted the cultivation of local seeds, avoiding agrotoxins, thus practicing sustainable farming methods. Rural workers develop ancient and new techniques, such as natural herbicides, biological pest control¹⁶, natural insecticides¹⁷, biofertilizers¹⁸ and green fertilizers¹⁹. More recently, the MST has also opposed the biodiesel program put forward by the Lula government, alleging that more sugarcane monocultures will be necessary for the production of ethanol. Not only will this occupy fertile land that could be destined for land reform, it also damages the environment, all for the purpose of producing a product that is designed for exportation.

Given these characteristics, the MST may be considered a *counter-hegemonic* movement, since it challenges the dominant political and economic model and campaigns to change the present *status quo*. Its struggle may also be considered a *subaltern cosmopolitan* movement, since it bears many of the traits listed by Santos: i.e. creativity in its political strategies, a certain transnational solidarity, and an emancipatory aim, which extends beyond the local scale (Arruda, 2007).

¹⁶ Biological pest control involves in using an organism (such as a predator, parasite or pathogen) to attack another that is damaging crops. This alternative is much used in sustainable farming systems. Available at www.planetaorganico.com.br/controle.htm. Accessed on 29.01.08.

¹⁷ These are natural recipes frequently used in organic farming to combat pests. Available at www.jardimdeflores.com.br/DICAS/A04dica. Accessed on 29.01.08.

¹⁸ These are prepared from easily-obtained agricultural products and subproducts. The most commonly used ingredients in the production of biofertilizers include sugar cane juice and milk. As regards ecological sustainability and responsibility, biofertilizers do not damage the local ecosystem, which enables the natural water sources to be preserved. Available at www.sitiogeranium.com.br/ts/biofertilizantes.php. Accessed on 29.01.08.

¹⁹ Green fertilizer is a special type of organic fertilizer [adubaç o](http://pt.wikipedia.org/wiki/Aduba%C3%A7%C3%A3o) made by cultivating plants which are then broken up, serving as a cover until they decompose. Wikip dia. Available at: <http://pt.wikipedia.org/wiki/Aduba%C3%A7%C3%A3o>. Accessed on 29.01.08.

III. 1. The legal and political strategies used by the MST to gain access to land

The MST's strategies to gain access to justice and judicial action are tightly bound up with their strategies of political activism. Indeed, as we hope to demonstrate in this study, the MST's great innovation lies in its combined use of judicial and political action. Let us begin by looking at the latter.

Over time, the MST has developed and refined its political strategies in order to give greater visibility to the movement and its cause. It has pressurized the public power to take its cause on board and attempted to sensitise society to the importance of land reform in Brazil. The main political strategies adopted by the movement are the following:

a) Collective occupations:

This is presently the most important political strategy used by the movement. It consists of occupying urban or rural spaces, such as ranches that are failing to fulfil their social function, public buildings, courthouses, banks and highways, in order to pressurise the executive, legislative and judicial powers to expropriate areas for land reform, resettle the landless families and invest in family agriculture. As Luiz Edson Fachin (2000) points out, the occupations are a response to the historic stagnation of the Brazilian land ownership structure.

The occupations generally take the form of *encampments*, which are raised by the settlers themselves in the form of shacks covered with black tarpaulin. The encampments vary in size in accordance with the number of families, but may house as many as 3000 people. The families are organised into groups (or nuclei), each responsible for a particular task, such as food, health, education, finance, etc. Each group has a leadership that controls and plans the activities. The various groups within the camps are overseen by a coordinating body, which not only brings them together, but also engages in dialogue with the government and society. This general coordinating body includes the camp's *general assembly* (supreme decision-taking body); the *group leaders*; and the *camp coordination board* (elected by the members).

There are two types of encampment: the temporary and the permanent. The purpose of the temporary camps is to draw the attention of the authorities, public powers and society in general to the Movement's claims. When these aims have been achieved, the camp is dissolved (Morissawa, 2001). The permanent camps, on the other hand, only break up when all members have been settled. Throughout the encampment's existence, the MST also promotes various activities, such as education, and organises events designed to sensitise public opinion and exert pressure upon the authorities.

b) Marches

Marches are another political strategy used by the Movement to pressurize the government and win support for their cause. Their aim is also to draw the attention of society and government institutions to the problems faced in the countryside. They take place along highways or in areas of the city, and involve not only militants from the movement but also women, children and sympathisers.

c) Fasting and hunger strikes

This type of strategy is used in the most extreme cases. The aim is to denounce the lack of food and housing, and draw attention to the hardships suffered by the rural workers. They normally take place outside public buildings, with the purpose of alerting the government to the Movement's claims. The hunger strike is maintained for an indeterminate period, until the government gives in. It is also an important way of sensitizing the general public to its causes (Morissawa, 2001).

d) Vigils

These are short-term demonstrations, but are maintained 24-hours-a-day outside the headquarters of some public body, a garrison or a police station, always lobbying for rights (Morissawa, 2001). On 8th March 2008 (International Woman's Day), the women from the Landless Movement held a vigil in front of the Brazilian agrochemical company, Nortox, in Paraná, in protest at the advance of agribusiness, the production of transgenics and agrotoxins²⁰. The protest, whose motto was *Landless Women in Defence of Life, Water, Biodiversity and Food Sovereignty*, involved more than 700 militants²¹.

e) Public demonstrations in large cities

Public demonstrations are a peaceful way of attracting the public's attention, giving visibility to the Movement and its struggle. The landless workers travel to the cities and hold a parade or public demonstration. All wear MST T-shirts and caps, and carry flags. However, despite the peaceful nature of the demonstrations, there has often been police repression, which has on occasions caused the deaths of landless workers (Morissawa, 2001).

III. 1.1 Political strategies allied to judicial strategies: joint efforts with people's lawyers

For more than twenty years of its existence, the political strategies employed by MST members, in addition to causing a strong impact on the public powers, in society and in the media, have almost inevitably ended up involving the Brazilian judicial system. As we shall see below, civil and criminal suits have been used to target the Movement's leaders and members in reaction to their strategies of questioning the liberal and individualistic conception of property rights as reflected in private property law.

The Brazilian judiciary, for its part, has generally taken the side of the plaintiffs in these cases, taking a conservative attitude towards property law and opposing the claims of the Movement. However, the legal system is somewhat contradictory in this respect, for Article 5, Clause 23 of the 1988 Constitution establishes that ownership of land is only constitutionally protected provided that it is productive and fulfils its social function. Hence, the MST has generally made use of this constitutional provision in its legal strategies.

²⁰ "Mulheres realizam vigília em frente à Nortox no Paraná" ("Women hold vigil outside Nortox in Paraná") Available at <http://www.mst.org.br/mst>. Accessed on 29.01.08.

²¹ Idem.

The Movement is legally defended by people's lawyers, who also liaise with the legal system on its behalf. Their efforts are directed at creating and applying *judicial and non-judicial* legal strategies to reinforce the Movement's political strategies; this involves not only making use of the legal tools available but also the construction of new interpretations in an attempt to generate jurisprudential solutions that are favourable to the struggle for land and social justice.

In the next section, we outline some of the main judicial strategies used. We then go on to examine the connection between these and the MST's political strategies, and discuss the positive impacts of this connection in the ambit of judicial decisions²².

a) Judicial Strategies

The judicial strategies examined here represent those that are most commonly adopted by the MST's legal consultants in the lawsuits in which they are involved, and which have produced favourable results. They include: *the Bill of Review appeal; reinterpretations of Constitutional and Procedural Law; arguments based upon the prevalence of human rights over property rights; collective legal action and the extension of the applicability of pertinent legislation; demanding compliance with the social function requirement of ownership; demanding proof of exercise of possession by the owner; sensitizing and liaising with the judiciary, and taking the case to the upper courts.*

Let us look at each of these in turn.

The Bill of Review Appeal. This is a civil procedural appeal that has been often used on behalf of the MST in the context of repossession suits. Thus, whenever the judiciary grants a preliminary injunction to the estate owner, to the detriment of the landless families, the defence team lodges an appeal in a higher court.

This form of appeal is designed to suspend the preliminary injunction granted in the repossession suit in order to allow the landless families to remain in the occupied areas and intensify political pressure for State expropriation of the land, for the subsequent settlement of the families. The legal strategy adopted by the lawyers defending the Landless is not to use the Bill of Review appeal in a narrow way but also to attend to the procedural formalities and legal grounds connected with it.

It should be pointed out that the MST does not have legal person status, which means that it may not file a Bill of Rights appeal under the terms of procedural law. Therefore, the appeal is generally brought by one or two members of the movement, chosen by the group in advance, who will figure as *appellants* during the case. Thus, the legal defence of all the families is ensured with the exposure of only a few of the occupiers.

In addition to attempting to suspend the eviction of the families via the preliminary injunction, the bill of review has served as an important tool of appeal for the Movement's lawyers, allowing them to expound their legal arguments (procedural and non-procedural) in defence of the struggle for land reform. These arguments may also ultimately affect the courts' decisions, which is an important additional function of the bill of review appeal.

This is what happened in the case of the Primavera Estate in 1998 in Rio Grande do Sul. Hundreds of landless families occupied the area, calling for its expropriation for the

²² This part of our analysis is based upon extensive semi-structured interviews of four of the people's lawyers involved in the National Network of People's Lawyers (RENAP).

purpose of land reform. The owner filed a repossession suit with a motion for preliminary injunction. The local judge granted the motion and ordered the occupants to be evicted. The movement's legal advisors, led by lawyer Jacques Távora Alfonsin, applied for a bill of review appeal. In the appeal, "José Censi and others" figured as appellants. It was argued that the owners had failed to fulfill their social function; that the National Institute for Colonization and Agrarian Reform (INCRA) was interested in expropriating the estate for land reform; that there was a need for a reinterpretation and readjustment of the law (i.e. that this was a conflict of rights, rather than trespassing); and that the case should be tried by the Federal Court, rather than the State Court. The arguments were well-received by the attendant Associate Judge, who ordered the eviction orders to be suspended. When they went to trial before the 19th panel, the Movement's arguments were again sustained.

Reinterpretations of constitutional and procedural law. Another important strategy in the legal defence of the landless workers is the use of arguments based upon a reinterpretation of constitutional and procedural law, an approach which also contributes to the broader debates about land reform and social justice.

Given the paucity of doctrine and jurisprudence in defence of the basic human rights of this social group, the abundant legislation in defence of property rights, and the increasing number of lawsuits brought against landless workers, the Movement's lawyers have over the years developed arguments designed to offer a more sophisticated legal defence of the rural workers. Many of these arguments have been dismissed by magistrates, though some have been well received, and others have even managed to stimulate new arguments within the judiciary itself. In any case, this type of strategy has had an important role to play in countering the theoretical commonsense of legal practitioners and politicizing the Brazilian judiciary.

The arguments given below are part of the legal strategy used by lawyers acting on behalf of social movements engaged in the struggle for land. They are used in practically all the repossession cases involving the MST in most Brazilian states. The main arguments used in civil suits, both initial applications and appeals, are:

The prevalence of human rights over property rights. This argument holds that, whenever there is conflict between basic human rights and property rights, then the latter should be sacrificed. In the case of the repossession suits involving the MST, this conflict is quite clear cut. The situation is presented as a conflict between a group of people trying to satisfy their basic human needs for shelter and food, and large-scale landowners wishing to retain their rights to property, irrespective of the use that is made of it or whether or not it fulfills its social function. This argument was symbolically sustained in the decision passed by the 19th Civil Chamber of the Rio Grande do Sul Court of Justice in the case of the Primavera Estate, with repercussions on other proceedings in defence of MST occupations. The sentence stated:

"In sum, to decide, it is necessary to choose between two alternatives: 1) the material damage that the invasion will certainly cause (or has already caused) to the company leasing the occupied lands; 2) the injury to fundamental rights (or the denial of the social minimum) suffered by the 600 "landless" families who, being evicted from there, have literally nowhere to go. (...) Doctrine states that, if it is necessary to sacrifice the rights of one party, then property

rights should be sacrificed in order to guarantee fundamental rights, if that is the option. This solution is not indicated by doctrine alone; common sense also urges such a position. While attempting to remain, as far as possible, within the strict boundaries of the bill of review that examines the preliminary injunction of a repossession suit, there are, in my modest opinion, compelling reasons to dismiss the repossession claim of the respondent.” (Cadernos Renap, 2005)

Collective legal action and the extension of the applicability of pertinent legislation. The need for this argument reflects the extent to which Brazilian legal system is still dominated by an individual conception of rights, present not only in the legislative framework, but also in the training given to legal practitioners, and in the paradigm used for interpreting the facts. Lawsuits that involve groups of people, especially poor people whose citizenship and dignity are not respected, may not be judged by a single legislation. The usual procedure in repossession conflicts involving groups of defendants is for the Brazilian Civil Code to be strictly enforced. It is rare for the Land Statute, or even, crucially, the Federal Constitution, to be considered. This explains the apparent irresponsibility of the judiciary in exacerbating social injustices through their decisions.

Compliance with the social function requirement. This argument has been used for many years, ever since the promulgation of the Federal Constitution in 1988, which enshrined the principle of social function of property (Article 5 Clause 23). However, many courts have not yet acknowledged this constitutional principle, thereby contributing to the prevalence of private property law and to the exacerbation of land-related social conflict. On the other hand, other courts have been more receptive and have supported the demand to enforce the social function. This is what happened with the 19th Civil Chamber of the Rio Grande do Sul Court of Justice, for example, in the Primavera Ranch case in 1998. One of the Associate Judges stated that Brazilian law defends social value over and above individual value, and that the right of possession should therefore only be protected and guaranteed when the social function, as laid down in Article 5, Clause 23 of the Federal Constitution, had been duly taken into account. The judge claimed that: “it is not enough to assert ownership as ‘legal grounds’ in the initial application, as the social function of ownership is also a legal ground, in accordance with the Federal Constitution”. This position has since been studied and analysed by various legal specialists, and has been the topic of many commented articles and publications.²³ The decision has had repercussions in various Brazilian courts, strengthening legal arguments in defence of the struggle for land.

Proof of exercise of possession by the owner. According to the Code of Civil Procedure, Article 927, the owner is obliged to prove exercise of possession (i.e. its effective use) in order to regain possession of the land. The title deed is usually presented as proof of ownership, as if this were equivalent to the exercise of possession mentioned above. Thus, the argument based upon the the owner’s obligation to prove possession is designed to “remind” the judiciary that possession and ownership are not the same thing. That is to say,

²³ These include: RENAP. *Cadernos Renap*. Especial Fazenda Primavera. Série a proteção jurídica do povo da terra. No. 2. Year 1 - November 2001; ALFONSIN, Jacques Távora. *O acesso à terra como conteúdo de direitos humanos fundamentais à alimentação e à moradia*. Oporto Alegre: Sergio Fabris, 2003.

the owner must prove that he effectively exercises possession by economically developing the land and respecting environmental and labour aspects, rather than merely holding the title deed to the property.

Sensitizing and liaising with the judiciary. This strategy is one that has received most attention from lawyers and militants of the MST.

For the lawyer Elmano Freitas²⁴ the sensitization of judges should always take the form of a legal debate, involving two basic aspects. The first concerns their knowledge of the reality on the ground, their familiarity with the specific situation in hand. The situation is therefore expounded to the judge by a credible person who has knowledge of the cause, and who develops that line of argumentation in conversation with the magistrate. Therefore, when lawyers and members of the Movement seek audiences with the magistrate, they generally try to go accompanied by someone in authority, or by a personality that can lend credibility to the cause and who has personal knowledge of the specific situation, the families or the person that has been arrested. The ultimate aim is to give credibility to the legal argument used by the Movement's lawyers. The personality or authoritative figure in question may be a member of parliament, priest, bishop, academic, famous artist, local politician, an arbitrator of agricultural conflicts, or even a lawyer able to offer a different point of view that could influence the magistrate.

The second aspect raised by Freitas concerns the importance of alerting the judge to the political and social consequences of his/her decision. He believes that the legal debate should be laid out in the procedural documents. A political debate can be brought to bear upon a legal argument in a hearing with the magistrate, and this may help to bring about a decision that is favourable to the movement.

Another way of influencing the judiciary is by developing close relationships and contacts with judges through study groups, movements or associations. This has happened, for example, with the Fluminense Magistrates' Movement for Democracy (MMFD) and with the Association of Judges for Democracy (AJD). The National Network People's Lawyers of Rio de Janeiro (RENAP/PJ) is an example of such liaisons in operation. In 2006, RENAP and the MMFD conducted a joint campaign aimed at democratizing the Judiciary, which included a Seminar on the land reform issue. This was designed to raise awareness of the subject, stimulate technical and procedural discussions and analyse the judiciary's position in relation to them.

Taking the case to the upper courts. This strategy is used particularly in criminal cases in which MST leaders figure as defendants. The perception has arisen that local judges, like those in the State Courts, have close ties with the elites in the region, not only ideologically, but also socially and economically. Thus, the Movement's lawyers use a strategy of procedural appeals in an attempt to overturn the sentence. For this, the lawyers are prepared to take the case to the court of final appeal, that is to the Supreme Court of Justice.

Indeed, there have frequently been important differences between the decisions taken by the upper courts compared to the lower ones. According to Elmano Costa²⁵ this happens

²⁴ Interviewed for this research on 16.01.08.

²⁵ Interviewed for this research on 16.01.08.

because the Courts have traditionally tried criminal cases involving people from the middle and upper classes of society. Thus, their decisions have generally been designed to protect the rights of individual citizens. As one of the functions of the Courts is to standardise jurisprudence, they ultimately try the poor landless workers on the same basis as other citizens, i.e. by guaranteeing individual rights.

According to Elmano da Costa, the MST has been successful in all cases involving landless workers that have gone to the Supreme Court of Justice and the Supreme Federal Court. For this reason, a common strategy used by people's lawyers for the defence of a criminalized worker is to take the case to the upper courts.

b) Non-judicial legal strategies

Just as important as the judicial strategies are the non-judicial ones, i.e. cases that have taken place within the sphere of the law but outside the context of concrete judicial actions involving the MST. While the former serve for the legal procedural defence of the MST within the sphere of lawsuits, the latter fall outside this context. Their main aim is to foster proximity between the MST and the magistrates, and to sensitise present and future legal practitioners to the Movement's claims. It is important to point out that non-judicial strategies are implemented in connection with political and judicial ones.

Of the various non-judicial strategies used, this study focuses upon some of the important innovatory experiments adopted by the Movement and the people's lawyers, and which have attracted great dedication in their daily actions. They are: *i) technical and political training for lawyers and collective action* and *ii) partnerships with universities and incentives for the creation of University Legal Consultancy Services*

Technical and political training for lawyers, and collective action. One of the extrajudicial strategies used is the technical and political training of lawyers, and their involvement in joint actions in the struggle for land. It should be pointed out that this is not merely a strategy; it is actually a feature of popular advocacy, an aspect that is discussed in more depth in Chapter 3.

Given the intense criminalization of the MST, particularly by the judiciary and the media, and the large number of repossession suits and other legal-procedural practices adopted by landowners to prevent the expropriation of land, the lawyers that act on behalf of the Movement need to be constantly updated and retrained in the legal-procedural sphere. The training takes three basic forms. The first involves individual professional upgrading, in which the lawyer, of his/her own initiative, takes a postgraduate, or even Master's and Doctorate course, in areas of civil or criminal law. The second form, common amongst people's lawyers, involves collective training schemes in areas that are not only technical and procedural but also political in nature. These take place upon the initiative of the lawyers acting on behalf of the MST, who organise conferences, seminars or courses on specific subjects, particularly in areas of civil or criminal law. The aim is to develop a more in-depth understanding of these issues, while providing an opportunity for an exchange of experiences and a discussion of legal-procedural strategies for dealing with them. As these lawyers are directly involved in the collective struggle for access to land, they also gain political skills and knowledge in their daily practice, expanding their vision and adopting a critical posture about the political and social situation in the country. These experiences and perceptions are also shared in joint activities.

These joint training schemes have already brought effects in the sphere of jurisprudence, with important conquests that are favourable to the movement. For example, there have been significant victories in the area of criminal justice in the Federal Supreme Court and the Supreme Court of Justice. One such case occurred in the region of Quedas do Iguaçu, in the State of Paraná, as described by the lawyer Luciana Pivato²⁶. She recounts that the actions of popular advocacy managed to achieve an unprecedented decision in halting a criminal suit against one of the MST militants. The criminal case was dismissed before the sentence was passed, by application to the Supreme Court of Justice for a writ of *habeas corpus*. The ministers granted the request and the legal grounds of this appeal, considering the prosecution's evidence to be insufficient for the criminal trial to proceed (indeed, there was not even enough evidence to prove that a crime had been committed).

Partnerships with universities and incentives for the creation of University Legal Consultancy Services. Many of the obstacles faced by the Landless Workers' Movement have resulted from the positivistic training traditionally given to the judiciary, resulting in a lack of commitment to the working classes and the cause of land reform. Given this situation, the Movement has fostered partnerships with Brazilian Universities with a view to influencing the training given to legal professionals, in order to make them more sympathetic and understanding of the agrarian question.

Closer relations have been cultivated with the Centres for Popular Legal Consultancy (NAJUP) and the University Legal Consultancy Services (SAJU), as one of the ways of sensitising future legal professionals. According to José Geraldo de Sousa Júnior, the university legal consultancy services developed in the 1960s as a reaction to a kind of *legal training centred upon a debilitating positivism, which prevented the law from being perceived as a strategy for overcoming injustice and social exclusion, and raised formalistic obstacles to the emergence of new rights*. The University Legal Consultancy Services organise schemes involving students, academics and the local community in problems connected with human rights, such as the lack of proper housing for the lower classes, violence, disrespect of women's rights, and the precarious nature of the prison system. Projects have been set up in a number of law faculties to bring law students into contact with the agricultural situation of the country. These include cycles of debates about the agrarian question, photographic exhibitions and experience schemes, in which students live for a while in settlements and encampments connected to the Movement.

Another strategy used to train legal practitioners committed to land reform was the creation of a special graduate class in Law at the Goiás Federal University (UFG) exclusively for beneficiaries of the land reform and farming families. The course has resulted from a joint venture by the MST, other rural movements, the National Institute for Colonization and Land Reform (INCRA), the Ministry for Agrarian Development (MDA) and the Federal University of Goiás (UFG).

The experience schemes are another way in which the MST can liaise with university students and academics. Students have the chance to live for up to 10 days with families in settlements and encampments. Before and after the experience, they take part in collective activities, workshops, lectures, debates about social issues (particularly the agrarian question) with leaders of the MST and other social movements, as well as with intellectuals and academics.

²⁶ Interviewed for this research on 15/12/2007.

The first scheme of this kind took place in the city of Dourados, in Mato Grosso do Sul, in 1989²⁷, through a partnership between the Brazilian Federation of Agricultural Students (FEAB) and the Landless Workers' Movement. Today interdisciplinary experience schemes have proliferated throughout the country, involving students from a variety of different courses. In some places, they have the support of INCRA and the Ministry of Agricultural Development, such as the Interdisciplinary Experience Internship organised for the last four years by the University of Brasilia (UnB).

The experience schemes and projects organised by the NAJUPs and SAJUs today offer an opportunity for dialogue between the universities and society, with a view to developing a critical mindset about the agrarian question and the struggle for land.

III. 2. Impact of the political and judicial strategies: analysis of particular court cases

Having analysed the different legal and political strategies used by the MST and their lawyers, we will now try to identify and explain the impact of these upon the judiciary by briefly describing 34 rulings from cases heard between 1996 and 2005 in five regions of the country and which were favourable to the Landless Movement. 11 of these were civil suits and 23 criminal suits (see Appendix 1).

In our analysis, we will concentrate upon the following aspects: a) main types of lawsuits in which the movement figures as defendant; b) legal and political strategies adopted; c) the facts that led to the suit; and finally, d) the main principles invoked in the court rulings.

The first observation to be made concerns the fact that, in 34 of the lawsuits, MST members (mostly leaders) appeared as defendants; that is to say, the Movement's contact with the legal system came in proceedings brought against it. The plaintiffs in these cases were *private individuals* (owners of the occupied lands) in the civil suits and the *State Department of Justice* in the criminal cases.

Thus, the MST's expectations as regards access to justice and the possibility of achieving land reform and other claims seem to be focused in the daily struggle and political strategies adopted than on the locus of the judiciary itself. Indeed, the people and families involved in the Movement have had to struggle to overcome the entrenched prejudices of a judiciary who, for the 200 years of its existence, was systematically opposed to the struggle for land reform in the country, and whose rulings, in the last two decades of democracy, have been marked by conservatism and traditionalism.

However, over the years, rulings started to be issued that were more favourable to the landless, and with that, the MST began to give more attention to the legal and judicial struggle, though always within the context of the broader political struggle for land. There have now been a number of favourable legal decisions taken in different parts of the country, which reveals that the MST's strategies have had an important impact upon the legal system. In fact, it may be said that the MST has managed to "*bring about a broad consensus within*

²⁷ As described in the Report "2nd Interdisciplinary Experience Scheme (SC-PR)", at <http://www.midia independente.org/pt/red/2008/01/410810.shtml>. Accessed on 05.02.08.

that most stubbornly conservative of institutions – the judiciary – as to the legitimacy of its strategies to ensure that the Constitution is enforced”²⁸ (Sousa Júnior, 2003).

The second analysis concerns the types of cases involving the MST and the mechanism that generated them. Here we can see that the movement figured as defendant in both civil repossession suits and in criminal cases involving applications for remand in custody. As we can see, the fact generating the petitions in both cases was the same: namely the political strategy of collective occupation of rural estates that are unproductive and/or which do not fulfill their social function. Thus, a single fact often generates two quite different suits: a repossession suit with a motion for preliminary injunction for the immediate eviction of the occupying families, and an application for prison sentence for trespassing. This shows that the suits not only aimed to put an end to the occupation, they also sought to criminalize it.

A third important analysis concerns the political and legal strategies used by the MST. Examination of the data from the judicial rulings shows that judicial legal strategies were present in both civil and criminal processes. Thus, the cases analysed have all made use of strategies such as petitions for *bill of review* appeal and writ of *habeas corpus*; reinterpretation of constitutional and procedural law (such as the demand for proof of the social function of the ownership and the prevalence of human rights over property rights), taking the case to the upper courts, and sensitization of the judiciary. These strategies were used in combination with the political strategy of occupation, designed to exert pressure to ensure that the struggle for land and dwelling rights be taken seriously. Thus, both judicial and political strategies are ultimately aiming at the same objective.

This can be seen in an analysis of the content of sentences favourable to the landless invoked in courts of the first and second instance. The data shows that, although suits have sought to criminalize the landless, many judges have granted the reinterpretations put forward by the MST lawyers, revealing the court's commitment to a role that goes beyond the classic function of the judiciary and which involves the enforcement of new constitutional demands and values.

One example that illustrates this was the bill of review appeal (Suit No. 598360402) filed by José Cenci and other MST leaders. The Rio Grande do Sul Court of Justice granted the appeal, allowing over 600 families to remain in the area, on a majority understanding that took account of fundamental rights such as the social minimum, the prevalence of the families' basic human rights over pure property rights, and compliance with the social function of the area (although the estate was productive). The ruling thus assumed an emancipatory democratic role, aimed at ensuring the principles of human dignity and social solidarity.

Therefore, although the judicial power has generally been unprepared to provide efficacious and satisfactory responses to agricultural disputes arising out of land occupations, insisting upon compliance with the letter of the law rather than upholding justice, the various legal and political strategies used by the Movement have clearly been effective in eliciting a positive response from the judiciary in those cases where the result was positive. That is to say, the magistrates were ultimately able to *extract from those strategies emancipatory energies capable of recognising daily conflict situations and of encouraging the judiciary and its apparatus towards new interventions oriented towards social change.* (Sousa Júnior, 2003).

The fourth observation concerns the fact that, when rulings were favorable to the Landless Workers' Movement, legal arguments began to take shape when the magistrates let go of the Civil Code and strict civilist conceptions of property and started to enter into dialogue with the Federal Constitution and Fundamental rights. Indeed, this is also one of the arguments sustained by the MST's lawyers in the practice of judicial strategies. Thus, of the 11 civil rulings analyzed, 10 presented arguments based upon the Federal Constitution and Fundamental rights. In criminal suits, this figure is lower, though expressive nonetheless: of 23 decisions, over a third were grounded in the Constitution and Fundamental Rights. These figures reveal how comprehension of the MST's struggle has led the judiciary to abandon its individualistic and privatistic conceptions and to open itself up to a conception based upon the Rule of Law, according to which social and collective rights may be effectively realized.

The fifth and final observation concerns the effectiveness of the strategy of appealing to higher courts in order to overturn criminal rulings and plead for the provisional release of the landless in criminal cases. In this sphere, 14 of the 23 favorable rulings analyzed were issued by the Supreme Court of Justice. This confirms that the strategy has yielded important results for the MST and that it has contributed to the construction and consolidation of jurisprudence favorable not only to the MST but also to other social movements whose struggles have been criminalized.

Next, we shall look in more detail at the lawyers' contribution (particularly the National Network of People's Lawyers) to the MST's legal and political struggles, and to the creation and implementation of innovative experiments inherent to those strategies.

IV. The National Network of People's Lawyers (RENAP) and its contribution to the MST's struggle

Amongst the new tools and initiatives that have appeared in Brazil to provide access to law and justice, organizations have emerged that are committed "*to expressing some of the tensions inherent in the culture surrounding the training of legal practitioners and demanding a redefinition of their social function (for what and for whom)*" (Sousa Júnior, 2003).

One such body is the National Network of People's Lawyers (RENAP), a new form of legal mobilization which arose in 1995 in a political context marked by the deepening of the neoliberal project and by great conflicts in the countryside, particularly involving the Landless Workers' Movement.²⁹ This organization (which acts on the national level) arose in response to the Movement's urgent need for legal support to extend its forms of defence and enforce its collective rights. Committed to a new conception of law, it is interested in exploring the potential of the legal system and its instruments not only to bring expropriation actions for the purpose of land reform but also to defend MST members in civil and criminal suits.

Since its creation, RENAP's aim has been to provide support and legal consultancy services to urban and rural social movements, including the MST (Cadernos RENAP, 2005). The political, practical and theoretical experience of the people's lawyers with regards to the

²⁹ In 1995 alone, there were around 440 conflicts in rural areas.

Movement's demands has, nevertheless gone beyond providing defense of collective actions in the judicial system to enable new spaces to be opened up for the reinvention of new emancipatory democratic legal practices. Thus, we may affirm that the people's lawyers have made different kinds of contributions to the MST's struggle, both in the legal and political fields.

We may begin by mentioning that RENAP played a big part in synchronizing the social movements with the legal field (Houtzager, 2003). The MST, in the first years of its existence, did not believe in the law as a space for emancipation or for the vindication of claims, and had relationships with only a few of the more progressive lawyers. *"Their reasoning went along of the lines of: 'the law is a tool of the bourgeoisie and the oligarchic classes, and has always operated in favour of them; if the law only sees us as defendants in order to punish us, why should we use it?'"* (Santos, 2007). With time (in the 1990s), it began to develop closer, more permanent ties with lawyers. One of the factors that contributed to this change of attitude was redemocratization and the new Constitution of 1988, which portrayed the Judiciary as a feasible means for accessing justice (Santos, 2007).

The gradual dialogue that the lawyers began to establish between the legal and political fields of action for the MST also *"contributed particularly to overcome its resistance to enter the legal field and build relationships of trust between the Movement and other protagonists from the legal field, such as the informal networks of judges committed to social justice"* (Houtzager, 2003).

As the Movement grew and developed its strategies for struggle through massive land occupations, the conflicts in the field also increased as the more conservative sectors of the country reacted and sought to criminalize such actions. Thus, the lawyers' intervention became not only necessary, but also required an interpretation of the law and its statutes in the light of the Federal Constitution of 1988; indeed, one of the big legal arguments was that the encampments were in defense of the actions of the landless militants.

It is not by chance that Houtzager (2003) has already mentioned that RENAP has been strongly committed to the process of constitutionalization within the legal sphere, helping to propagate new doctrinal bases for arguments used in cases affecting the MST. These bases, for their part, consist of what we consider to be legal strategies, implemented on a daily basis in various Courts in the country. Thus, the people's lawyers have made a valuable contribution to the struggle through their attempts to cultivate a "new legal commonsense" about questions related to the MST's struggle. (Houtzager, 2003).

This new commonsense has reinterpreted a series of legal precepts, particularly concerning property law and the social function of ownership. Thus, the legal practice of lawyers combined with the political activism of the landless has produced important social results (such as the settlement of thousands of families) by converting the force of the social movement into legal force and vice versa.

This promotion of legal change and a "new theoretical commonsense" by the lawyers has also been accompanied by reactions from the conservative forces connected to the economic power. In order to deal with these legal confrontations, RENAP has had to delve deeper in its theoretical and technical interpretations of the law, making use of a vast network of relations, including experts in legal doctrine, specialists and even judges. For this purpose, they have organized courses and seminars, and published numerous works on civil and criminal issues. This innovative strategy has enabled the MST to construct a web of alliances in legal and other spheres, largely unrivalled in its extension by other social movements. (Houtzager, 2003).

RENAP has also contributed to the development of liaisons between the MST and the universities, particularly students of law. This strategy, which is also considered to be an innovative initiative, is realized jointly by both parties. On the one hand, the lawyers establish the academic contacts in the faculties; then the MST members open up their camps and settlements to interested students and people curious about the movement and its struggles. This represents an important process in the sensitization of future legal practitioners, and has stimulated a vital debate about the role of Law and the teaching of it in counteracting social inequality and injustice. The success of this initiative is demonstrated by the fact that dozens of Legal Consultancy Services have sprung up in Universities upon the initiative of the students themselves, often inspired by preliminary contacts with the MST³⁰. Indeed, many of the lawyers presently involved in RENAP were molded by these experiences.

Legal consultancy encourages militants to view themselves as citizens. Using an educational approach designed to transmit a new conception of the law correlated with the urge for social struggle, RENAP lawyers take part in training courses in which workers are informed about their fundamental rights and taught how to recognize situations where those rights are breached. Thus, despite being branded as “marginals” or “outlaws” by most of the media and by the Brazilian elite, the landless workers learn to regard themselves as citizens involved in a legitimate struggle for a right that is constitutionally enshrined but not enforced, and come to understand that the law is actually on the side of their struggle, not against it.

Finally, mention should be made of how constant dialogue with the MST has provided RENAP with vital conditions for growth, while at the same time helping the MST to reorient its legal agenda from a conservative/defensive attitude to a radical/proactive one based upon notions of legality (Meszaros, 2007). Through the RENAP lawyers, the MST has managed to make the judiciary aware of its causes and contributed to the creation of a new legal language capable of dealing positively with these issues. Hence, claims that had previously been ignored or overlooked have been transformed into rights that are fully entitled to be enforced. In other words, absences have been transformed into presences.

V. Conclusions

This study has attempted to describe and analyze the main legal and political strategies used by the Landless Rural Workers' Movement in its struggle for law and justice in Brazil. It has also sought to explain why these strategies are today pursued in conjunction, and to what extent they may help to contribute to making the law and legal system more sensitive to the claims and social struggles of these workers, particularly those related to the issue of *land*.

We have seen that the access to law and justice presupposes a broad political process of social transformation. This includes the creation of more substantial forms of social justice and a developing awareness that the law contains many internal contradictions that may be used in the interests of the socially disadvantaged as much as of the dominant classes. Social

³⁰ This is the case of the People's Legal Consultancy Nucleus of Rio Grande do Sul (NUJUP/RS). Which came into existence in 2002. The group has held diverse activities in MST encampments and marches. Recently, the group received the 2nd Roberto Lyro Filho Award for their project on the right to residence in an urban occupation in Porto Alegre/RS.

movements fighting for land reform, like the MST, have only become aware of this fact in recent decades; but the knowledge has enabled them to complement their political strategies (such as the mass occupations of land) with innovative judicial and legal strategies. The resulting articulation between legal and political initiatives has considerably strengthened the movement's objectives, largely thanks to the intervention of the people's lawyers, who have liaised between the state legal system and the social movement.

In the course of this process, the hegemonic law currently in force has been put to the test. A new legal commonsense is starting to develop, with new attitudes being assumed by the judiciary, and the appearance of a new paradigm, within which the law is now interpreted in accordance with the value and quality of the justice meted out.

These observations are supported by an analysis of the rulings issued in civil and criminal cases that have been favourable to the MST, which reveal a receptivity towards interpretations based upon the constitutional principles of the prevalence of human rights, the social function of property, and a respect for human dignity and social solidarity.

The creative combination of new legal and political practices has allowed hegemonic institutions (such as the law and the courts) to be used in a non-hegemonic way. In the light of these experiences, it would seem that a positive response may be given to the question of whether law can be emancipatory (Santos, 2002: 439). In certain specific situations, such as those exemplified in this study, it is indeed possible to reinvent law, taking it beyond the liberal model towards a new legal and judicial paradigm. This necessarily involves a conception of access to law and justice that is more firmly committed to the values of social justice, that is, to substantial, rather than merely formal, equality between citizens.

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Annex 1

LEGAL RULINGS FAVOURABLE TO THE LANDLESS RURAL WORKERS' MOVEMENT											
Year	UF	Nature of the Suit/Repossessions	Plaintiff	Defendants (MST Leaders)	Families (approx.)	Size of area occupied	Fact	Type of Crime	Type of Application/Appeal	Court / Judicial Ruling	Legal Grounds for Ruling
1996	RO	Civil/Repossession	Private	more than 3	around 200	3600 hectares	Occupation of rural property by MST members	—	Plaintiff / motion for preliminary injunction.- 167/96 (Court of 1 st Instance)	State Court: Injunction denied	Application of social function of ownership Breach of Article 5 XXII and XXIII of the Federal Constitution.
1996	SP	Criminal / Remand in custody	MP	6	Information not provided	Information not provided	Occupation of rural property by MST members	trespassing - Gang membership	MST/Habeas Corpus - 4399	Supreme Court: Favourable – Habeas Corpus granted	Remand in custody replaced by provisional release. Application of fundamental principle inscribed in Article 5, LXVI, Federal Constitution
1996	SP	Criminal / Remand in custody	MP	5	Information not provided	Information not provided	Occupation of rural property by MST members	trespassing	MST/Habeas Corpus -5574	Supreme Court: Habeas Corpus granted	Action of popular movement attempting to implement land reform does not constitute crime against property; configures collective right, expression of citizenship. Popular pressure is a feature of

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								- Gang membership			the Democratic Rule of Law
1997	MG	Criminal	MP	13	Information not provided	Information not provided	Occupation of rural property by MST members	- Disseisin	MST/Habeas Corpus -237.079	Court of Justice: Favourable – Habeas Corpus granted	Occupation by rural workers without shelter demonstrates a state of need.
1997	RS	Civil/Repossession	Private	more than 3	Information not provided	Information not provided	Occupation of rural property by MST members	—	MST / Bill of Review Appeal No. 197144462 (Court of 2 nd Instance)	Court of Justice: Injunction denied (effect suspension of bill of review appeal)	Occupation as legitimate tool of social pressure.
1998	RS	Civil/Repossession	Merlin S/A Ind e Com*	more than 3	more than 600	more than 600 hectares	Occupation of rural property by MST members	—	MST / Bill of Review Procedure No. 598360402 (Court of 2 nd Instance)	Court of Justice: Injunction granted (suspension of eviction order)	Prevalence of social value above individual Non-compliance with social function of ownership (breach of Article 5 XXII and XXIII of the Federal Constitution)

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								—	MST / Bill of Review – on merit - Procedure No. 598360402 (Court of 2nd Instance)	Court of Justice: Bill of review appeal granted, guaranteeing right of families to remain in the area	##### ####
1999	PR	Criminal / Imprisonment	MP	5	Information not provided	Information not provided	Occupation of rural property by MST members	trespassing - Gang membership - Disobedience	MST/Habeas Corpus - 9896	Supreme Court: Habeas Corpus granted	Application of constitutional principle of presumption of innocence
2000	RS	Civil/ Repossession	Private	Information not provided	Information not provided	Information not provided	Occupation of rural property by MST members	—	MST /Bill of Review 70001054097	Court of Justice: Suspension granted in Bill of Review Appeal	Occupation interpreted as legitimate given the group's neediness (right of property X state of need)

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2000	PI	Criminal / complaint	MP	1	Information not provided	Information not provided	Occupation of rural property by MST members	- trespassing	MP/Complaint - 53021	Federal Court: Complaint denied	Absence of specific malice for crime of disseisin Occupation destined to serve as mere instrument of political pressure, aiming to open debate about problems related to the serious land question, therefore does not configure disseisin with intention, pure and simple.
								- Damage			
2000	PR	Criminal / Remand in custody	MP	20	Information not provided	Information not provided	Occupation of rural property by MST members	- trespassing	MST/Application for Acquittal - 41/97	State Court: Acquittal granted	Acquittal of defendants for lack of proof or impossibility of identifying possible offenders.
								- Gang membership			
								- False imprisonment			
								Arson			
								Bodily injury			
								Petty theft			
2000	SP	Criminal	MP	11	Information not provided	Information not provided	Occupation of rural	- trespassing	MP/Appellate Review No.	Court of Justice:	Non-configuration of crime of gang formation and disseisin

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						provided	property by MST members (around 700 people)		2725503	Appellate review denied	Therefore, absence of crime.
								- Gang membership			
								Petty theft			
								- Damage			
2001	SP	Criminal	MP	6	Information not provided	Information not provided	Occupation of tollbooths on São Paulo State Highway.	Robbery and arson	MST/Habeas Corpus -338.041/8	Court of Justice: Habeas Corpus granted	Annulment of sentence. Extinction of punishableness by prescription of punitive intention as to crime of damage in relation to some defendants. Legal ruling relaxing the imprisonment of all defendants through excess time.
								Damage			
2001	RS	Civil/Repossession	Private	3	Information not provided	3.0 hectares of a total of 11,156.30 ha.	Occupation of rural property by MST members	—	Applicant/Bill of Review – injunction (Court of 2 nd Instance) - 70003434388	Court of Justice: Injunction denied	Non-proof of social function of ownership

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								—	Applicant/Bill of Review – on merit (Court of 2 nd Instance) - 70003434388	Court of Justice: merit denied	Non-proof of social function of ownership (breach of Article 5 XXII and XXIII of the Federal Constitution) Ownership of Private property bound to responsibility to ensure dignified existence to all, in accordance with the precepts of social justice.
2002	SP	Criminal / Imprisonment	MP	1	Information not provided	Information not provided	Possession of shotgun by MST leader	Possession of firearms (Law 9437/97)	MST/Habeas Corpus 22.083	Supreme Court: Habeas Corpus granted	No need for remand in custody
2002	SP	Criminal / Remand in custody	MP	5	Information not provided	Information not provided	Occupation of rural property by MST members	Gang membership – trespassing – material damage	MST/Habeas Corpus 22.465	Supreme Court: Habeas Corpus granted and remand in custody revoked	Lack of concrete grounds for remand in custody The formulation of general observations do not fulfil legal requirements
2002	RS	Civil/ Prohibitory action	Private	MST**.	Information not provided	Information not provided	Occupation near to rural property	—	Applicant/Injunction (Court of 1 st Instance) - 2100943233	State Court: Injunction denied	Need for protection of property to be observed in fundamental principles of Federal Constitution Protection of property bound to respect for human dignity and social solidarity

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2002	RO	Civil/ Appellate Review of Repossession	S.A Agrop.R io Apediar	more than 2	Around 250 families (approximat ely 1000 people, including the elderly, women and children).	18,559.0 3 hectares	Occupation of rural property by MST members	—	Applicant/Appeal - Proc 01001566-3 (Court of 2nd Instance)	Court of Justice: Appellate review denied on majority decision	##### ####
2003	RJ	Civil/ Repossession	Private	2	Information not provided	Informati on not provided	Occupation of rural property by MST members	—	Applicant/Injunctio n (Court of 1 st Instance) -5018/03	State Court: Injunction denied (maintenanc e of all defendants at site)	Property does not have absolute character. Proven non- productivity. Court should attend to social purpose and demands for common good. Application of International Pact of Social and Cultural Economic Rights Presence of judge “in loco”
2003	SP	Criminal / Remand in custody	MP	6	Information not provided	Informati on not provided	Occupation of rural property by MST members	Gang membershi p	MST/HC 386.660- 3/9	Court of Justice: Habeas Corpus granted	Disrespect of constitutional principle of innocence Failure to attend to grounds that authorise remand in custody as exceptional measure Lack of individualization in dealing with each defendant
								Theft			
								Damage			

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2003	SP	Criminal / Remand in custody	MP	1	Information not provided	Information not provided	Occupation of rural property by MST members Theft of two heads of livestock to feed the camp members	Qualified theft	MST/HC 386.660-3/8	Court of Justice: Habeas Corpus granted	Defendant in default. Default not sufficient reason to decree remand in custody Lack of grounds for remand in custody
2003	SP	Criminal / Remand in custody	MP	2	Information not provided	Information not provided	Occupation of rural property by MST members	Qualified theft	MST/Habeas Corpus -27.856	Supreme Court: Habeas Corpus granted	General grounds and simple possibility of suspension of process insufficient for remand in custody
2003	SP	Criminal / Claim	MP		Information not provided	Information not provided	Even after granting of HC 22.083, imprisonment continues	Possession of firearms (Law 9437/97)	MST /Claim 1466	Supreme Court: Majority decision in granting claim and HC	No one shall be taken to prison or kept there when the law has granted provisional release with or without bail (application of Federal Constitution '88)
2004	SP	Criminal / Remand in custody	MP	5	Information not provided	Information not provided	Occupation of rural property by MST members	Qualified theft	MST/Habeas Corpus -30,629	Supreme Court: Habeas Corpus granted	Impossible to maintain remand in custody decree, which presents general motivation for justifying its adoption, without demonstrating concrete reasons for such a harsh measure.

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								- Gang membership			
2004	M G	Civil/ Prohibitory action with injunction	Charlet Agrop LTDA	18 named in addition to the general involvement of the MST, MLT*** and MLST*** *	Information not provided	945.5 ha.	Occupation near to rural property	—	Applicant/24021131 11- 7 (Court of 1 st Instance)	State Court: Prohibitory action denied	Lack of real threat or serious violation of right of possession
2004	M G	Civil/ Repossession	Private	12	Information not provided	90 ha. of total of 1448 ha.	Injunction	—	Applicant/on merit - 02403982125-1	State Court: Repossession denied	Proven non-productivity. Non- compliance with social function of ownership Breach of Article 5 XXII and XXIII of the Federal Constitution.
2004	M G	Civil/ Prohibitory action with injunction	Private	more than 2	80	Information not provided	Occupation near to rural property	—	Applicant/on merit - 0240314769-7	State Court: denied	Lack of real threat to right of possession No proof of compliance with social function of ownership
2004	SP	Criminal / Remand in custody	MP	1	Information not provided	Information not provided	Occupation near to rural property	- Formation of armed gang	MST/Habeas Corpus -39.836	Supreme Court: Habeas Corpus granted	Decree of remand in custody not adequate to the risk that defendant's freedom represents to "public order and social peace" General decision that treated all defendants equally, although their degree of

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								- Kidnapping and false imprisonment			involvement in episode varied
								Robbery with aggravated assault			
								- Qualified damage			
2005	PA	Criminal / Remand in custody	MP	1	Information not provided	Information not provided	Occupation near to rural property	121, 154	MST/Habeas Corpus -39,135	Supreme Court: Habeas Corpus granted	Imprisonment only grounded on lack of close examination in hearing, as other justifications presented, position as leader of rural movement and existence of other criminal suits for same conduct do not bring any concrete implications for his "periculum libertatis"
								False imprisonment			
2005	AL	Criminal / Remand in custody	MP	6	Information not provided	Information not provided	Occupation of public building (headquarters of INCRA) by MST	Not identified in sentence	MST/Habeas Corpus -2149	Supreme Court: by majority	Application for provisional liberty granted.

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							members				
2005	RS	Criminal / rehearing en banc	MP	3	Information not provided	Information not provided	The agents restricted the movement of military police in order to negotiate the freedom of "landless settlers"	Kidnapping and extortion	MST/Rehearing en banc - 70010913218	Court of Justice: granted rehearing by majority	Understanding that there was no crime of extortion since the advantage sought was of non-property nature
2005	RS	Criminal / Criminal action		11	Information not provided	Information not provided	Occupation near to rural property	False imprisonment	MST/Appeal.	Court of Justice: appellate review unanimously granted	Extinction of punishableness decreed and acquittal of imputations of theft and gang formation
								Theft			
								Gang membership			
2005	SP	Criminal / Remand in custody	MP	1	Information not provided	Information not provided	Occupation near to rural property	Qualified theft	MST/Habeas Corpus -29.876	Supreme Court: Habeas Corpus	Lack of proof of existence of "periculum libertatis" in relation to defendant

The Landless Rural Workers' Movement and its Legal and Political Strategies for Gaining Access to Law and Justice in Brazil

										granted	
2005	PR	Criminal / Remand in custody	MP	2	Information not provided	Information not provided	Landless workers accused of committing homicide against a worker from the Caracu Estate	Qualified homicide	MST/Habeas Corpus -46.339	Supreme Court: Habeas Corpus granted	Remand in custody as exceptional measure
2005	SP	Criminal / Remand in custody	MP	4	60	13 hectares	Occupation of rural property by MST members	Arson Qualified theft	MST/Habeas Corpus -50.220	Supreme Court: Habeas Corpus granted	Lack of evidence supporting measure Application of constitutional principle of innocence
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