



**AMICUS CURIAE**

Submission before the Inter-American Court of Human Rights  
with regards to the case Antonio Tavares Pereira et al. v. Brazil

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*JOINT*-Ligas de ONGs em Moçambique

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## STATEMENT OF IDENTITY AND INTEREST OF AMICUS CURIAE

1. Pursuant to Article 44 of the Court's Rules of Procedure, the organizations Robert F. Kennedy Human Rights (RFKHR), Centre for Human Rights, University of Pretoria, Odhikar, the National Union of Institutions for Social Action Work (UNITAS), Kazakhstan International Bureau For Human Rights and Rule of Law (KIBHR), the International Service for Human Rights, IHRDA, Centre for Human Rights and Democracy in Africa (CHRDA), the Center for Alternatives to Development (CEALDES) and *JOINT-Ligas de ONGs em Moçambique*, submit this amicus curiae brief, with the aim of contributing respectfully, independently and impartially with some legal considerations to the decision that the Honorable Inter-American Court of Human Rights (hereinafter, the “Inter-American Court” or the “Honorable Court”) will take in the case of Antonio Tavares Pereira et al. v. Brazil.
2. This amicus brief is submitted by the aforementioned organizations on a voluntary basis, in order to contribute to the analysis and progressive protection of civic space, particularly, freedom of expression, and freedom of association, as part of the core values we have been defending and protecting in our organization for years. We believe that the Case of Antonio Tavares Pereira et al. v. Brazil represents an important opportunity to deepen and expand inter-American standards on those rights, especially as it involves the *Movimento dos Trabalhadores Sem Terra (MST)*, the largest workers' movement in Latin America.

### I. INTERNATIONAL HUMAN RIGHTS FRAMEWORK

3. Brazil is party to several international human rights instruments which explicitly guarantee the right to freedom of expression, association, and peaceful assembly, including the Universal Declaration of Human Rights (art. 19 and 20), the International Covenant on Civil and Political Rights (ICCPR) (art. 19, 21 and 22), and the American Convention on Human Rights (art. 13, 15 and 16).<sup>1</sup>
4. The rights to freedom of expression, association, and peaceful assembly are often intertwined. The right to association and the freedom of peaceful assembly enable people to express themselves, share their opinions, express dissent, propose solutions, mobilize, organize and connect, raise grievances, contribute to shaping public opinion and decision-making, consequently constituting real drivers of change.<sup>2</sup> Freedom of expression is often a necessary component of the rights of assembly and association. These rights “ensure that people have a voice and are able to organize collectively around shared interests. Their action in the social domain is particularly important because they

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<sup>1</sup> Additionally, Brazil is party to other treaties which recognize the right to freedom of association for particular groups of people, such as the Convention on the Elimination of All Forms of Discrimination against Women (art. 7c) and the Convention on the Rights of the Child (art. 15). This right is also recognized in the Declaration on human rights defenders (Article 5.a), and includes the right of people to interact and organize among themselves to collectively express, promote, pursue and defend common interests. U.N. General Assembly, *Report of the Special Representative of the Secretary-General on the issue of human rights defenders*, Hina Jilani, October 2004, A/59/401, párr. 46.

<sup>2</sup> Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule, [A/73/279](#) (7 August 2018) ¶ 8 [hereinafter *Report of UN Special Rapporteur Clément Voule of 2018*].

help to tackle the barriers of exclusion.”<sup>3</sup> The European Court of Human Rights has stated that “the protection of opinions and the freedom to express them is one of the objectives of the freedoms of assembly and association.”<sup>4</sup>

5. The Inter-American Court has established that both the freedom of expression and of association have two dimensions. The first dimension refers to the right of the individual to express or associate freely and to use the appropriate means to exercise that freedom. The social or collective dimension refers to the right of the members of a group to achieve certain goals together and to benefit from them<sup>5</sup>, or in the case of freedom of expression of society’s right to obtain and receive any information and ideas.<sup>6</sup>
6. The exercise of the rights of freedom of expression, peaceful assembly and of association contribute to the strengthening of democratic societies, including an inclusive and effective system of checks and balances essential for societies in which power is held to account.<sup>7</sup> In order for individuals and civil society actors to be able to participate in decision-making at all levels of government, these rights must be guaranteed. The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Voule has stated that the “use of public space, participation in public debate and the possibility of organizing associations all contribute to enabling civic space [...] which provides for peaceful, inclusive and just societies with effective, accountable and inclusive institutions.”<sup>8</sup>
7. This brief focuses on the right to freedom of association and will first address the international and regional standards that protect the rights of collective organizations. Specifically, it will address the collective dimension of the right, whether groups without legal personality are protected under international law and whether groups without legal personality have been recognized as right-holders before regional human rights mechanisms. Second, it will address the specific situation of the *Movimento dos Trabalhadores Sem Terra* in Brazil, what characterizes them as a group, and how it has been recognized as such in Brazil. Finally, we will include some concluding remarks.

## II. CONTENT AND SCOPE OF PROTECTION OF THE RIGHT TO FREEDOM OF ASSOCIATION UNDER INTERNATIONAL HUMAN RIGHTS LAW

8. The right to freedom of association “protects any group of individuals or legal entities brought together in order to collectively act, express, promote, pursue or defend a field

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<sup>3</sup> Report of UN Special Rapporteur Clément Voule of 2018, ¶ 9.

<sup>4</sup> Freedom and Democracy Party (ÖZDEP) v. Turkey [GC], 1999, ¶ 37

<sup>5</sup> IACtHR, Case Lagos del Campo v. Perú. Merits, Reparations and Costs. Judgment of August 31, 2017. Series C No. 340, ¶. 162. See also Case of Huilca Tecse v. Peru. Merits, Reparations and Costs. Judgment of March 3, 2005. Series C No. 121, ¶¶70 to 72; and Case of Cantoral Huamaní and García Santa Cruz v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167 , ¶148.

<sup>6</sup> IACtHR, Case Kimel v. Argentina. Merits, Reparations and Costs. Judgment of May 3, 2008. Series C No. 177. para. 53; IACtHR, Case of Claude-Reyes et al. v. Chile. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, ¶ 75;

<sup>7</sup> Report of UN Special Rapporteur Clément Voule of 2018, ¶ 14.

<sup>8</sup> Report of UN Special Rapporteur Clément Voule of 2018, ¶ 17.

of common interests.”<sup>9</sup> Associations may take diverse forms, including, but not limited to, civil society organizations, cooperatives, non-governmental organizations, religious associations, political parties, foundations or online associations.<sup>10</sup> The key qualification, for the former UN Special Rapporteur on the rights to freedom of peaceful assembly and of association Maina Kiai, is “the freedom to function in unison towards some kind of joint goal.”<sup>11</sup>

9. The African Commission on Human and People’s Rights (ACmHPR) in the case *Monim Elgak, Osman Hummeida & Amir Suliman v. Sudan* clearly stated that “the right to freedom of association is both an individual and collective right which allows individuals to join together to pursue and further collective interests in groups, such as NGOs, political parties and trade unions.”<sup>12</sup> The ACmHPR later reiterated this standard in its Guidelines on Freedom of Association and Assembly in Africa by stating that the “right to freedom of association is a right enjoyed both by individuals and by groups.”<sup>13</sup>
10. In this regard, the Inter-American Court has stated that “the freedom to associate and to pursue certain collective goals are indivisible, so that a limitation of the possibilities of association represents directly, and to the same extent, a limitation of the right of the collectivity to achieve its proposed purposes.”<sup>14</sup> The Court has understood that the protection of the rights of associations is indispensable to safeguard the right of members to organize.<sup>15</sup>
11. The European Court on Human Rights (ECTHR) has affirmed that where civil society functions in a healthy manner, the “participation of citizens in the democratic process is to a large extent achieved through belonging to associations in which they may integrate with each other and pursue common objectives collectively.”<sup>16</sup> Furthermore, it has highlighted that this right is particularly important for people belonging to minority groups given that “forming an association in order to express and promote its identity may be instrumental in helping a minority to preserve and uphold its rights”<sup>17</sup>
12. It is well established under international law that the right to freedom of association protects both formal (registered organizations) and informal associations (those without

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<sup>9</sup> UN Human Rights Council, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association Maina Kiai [hereinafter *Report of UN Special Rapporteur Maina Kiai 2012*], ¶51, U.N. Doc. [A/HRC/20/27](#) (May 21, 2012); Hina Jilani (U.N. Special Rapporteur of the Secretary-General on Human Rights Defenders), Report of the Special Rapporteur on human rights defenders, ¶ 46, U.N. Doc. A/59/401 (Oct. 1, 2004); African Commission on Human and Peoples’ Rights [Afr. Comm’n H.P.R.], Report of the Study Group on Freedom of Association & Assembly in Africa 23 (2014).

<sup>10</sup> *Report of UN Special Rapporteur Maina Kiai 2012*, ¶ 52.

<sup>11</sup> Maina Kiai, [Freedom of Association Chapter of FOAA Online!](#) (April 2017) p. 10.

<sup>12</sup> ACmHPR, *Monim Elgak, Osman Hummeida & Amir Suliman* (represented by International Federation for Human Rights & World Organisation Against Torture) v. Sudan, [Comm. No. 379/09](#) (2014), ¶118

<sup>13</sup> ACmHPR, [Guidelines on Freedom of Association and Assembly in Africa](#) (November 2017), ¶8.

<sup>14</sup> IACtHR, *Entitlement of legal entities to hold rights under the Inter-American Human Rights System*, Advisory Opinion OC-22/16 of February 26, 2016. Series A No. 22, [hereinafter *Advisory Opinion OC 22/16*] ¶96 citing case of *Huilca Tecse v. Peru*. Merits, Reparations and Costs. Judgment of March 3, 2005. Series C No. 121, ¶70

<sup>15</sup> *Advisory Opinion OC 22/16*, ¶96

<sup>16</sup> ECtHR, *Moscow Branch of the Salvation Army v. Russia*, 2006, ¶ 61.

<sup>17</sup> ECtHR, *Gorzelik and Others v. Poland* [GC], 2004, ¶ 93

legal personality).<sup>18</sup> The Guidelines on Freedom of Association and Assembly in Africa of the ACmHPR specifically state that an association may be formal (de jure) or informal (de facto). The Guidelines define an informal association as one that “does not have legal personality, but that nonetheless has some institutional form or structure.”<sup>19</sup> Former UN Special Rapporteur Maina Kiai has emphasized that a group’s “formal registration or recognition by authorities should not be required in order for associations to challenge decision-making processes [...]. Recognition should not confer advantages that would not be available to unregistered or unrecognized groups.”<sup>20</sup>

13. The Report of the Study Group of the ACmHPR also recognizes that the right to freedom of association “is a right adhering in the people; as such, people should be free to form and operate informal associations with or without the authorization of the [S]tate; and indeed, any banning of informal associations would also violate the core principle of legality, as it would be impossible to define with sufficient clarity what do and do not constitute informal associations, given the natural tendency of persons to work together to pursue common ends.”<sup>21</sup>
14. While associations may choose to be formed as legal entities, that does not obligate individuals to do so in order to exercise their freedom of association. Indeed, “registration should not be compulsory. NGOs should be allowed to exist and carry out collective activities without having to register if they so wish.”<sup>22</sup> The ACmHPR further elaborates that “States shall not compel associations to register in order to be allowed to exist and to operate freely. Informal (de facto) associations shall not be punished or criminalized under the law or in practice on the basis of their lack of formal (de jure) status”.<sup>23</sup>
15. The right to freedom of association includes the group’s right to freely determine their internal structure, the activities they want to carry out, their action program, among many others.<sup>24</sup> This is also reiterated by the ACmHPR, which has indicated that “Associations shall determine their purposes and activities freely”<sup>25</sup> and “shall be self-governing and free to determine their internal management structures, rules for selecting governing officers, internal accountability mechanisms and other internal governance matters”.<sup>26</sup> The ECtHR has also stated that it is “unacceptable that an association should be forced to take a legal shape its founders and members did not seek,

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<sup>18</sup> UN Human Rights Council, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, UN Doc. [A/HRC/29/25](#), 28 April 2015, ¶ 59.

<sup>19</sup> ACmHPR, [Guidelines on Freedom of Association and Assembly in Africa](#) (November 2017), p.9.

<sup>20</sup> UN Human Rights Council, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, UN Doc. [A/HRC/29/25](#), 28 April 2015, ¶ 59.

<sup>21</sup> ACmHPR, *Report of the Study Group on Freedom of Association & Assembly in Africa*, 2014, III.C.4. ¶8.

<sup>22</sup> UN General Assembly, *Report of the UN Special Representative of the Secretary-General on human rights defenders, Hina Jilani*, U.N. Doc. A/59/401 (1 October 2004) ¶ 82 a).

<sup>23</sup> ACmHPR, [Guidelines on Freedom of Association and Assembly in Africa](#) (November 2017) ¶11.

<sup>24</sup> Inter-American Court of Human Rights, *Case of Baena Ricardo et al. v. Panama*, Merits, Reparations, Costs, February 2001, Series No. 72, para. 156. [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_72\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_72_ing.pdf); See also *Report of UN Special Rapporteur Maina Kiai 2012* ¶ 65.

<sup>25</sup> ACmHPR, [Guidelines on Freedom of Association and Assembly in Africa](#) (November 2017) ¶23.

<sup>26</sup> ACmHPR, [Guidelines on Freedom of Association and Assembly in Africa](#) (November 2017) ¶36.

finding that such an approach, if adopted, would reduce the freedom of association of the founders and members so as to render it either non-existent or of no practical value”<sup>27</sup>

16. Freedom of association guarantees are implicated when a group “has been formed with the object of pursuing certain aims and has a degree of stability and thus some kind of institutional (though not formal) structure.”<sup>28</sup>

### III. THE RECOGNITION OF COMMUNITIES AS A COLLECTIVE BEFORE REGIONAL HUMAN RIGHTS MECHANISMS

17. In cases involving victims belonging to vulnerable groups, the spectrum of protection is broadened in favor of these groups or collectives, as long as the violation occurred because they belonged to this group.<sup>29</sup> The jurisprudence of the Inter-American Court of Human Rights now recognizes indigenous peoples as collective subjects of protection under the American Convention on Human Rights. In cases prior to the *Case of the Kichwa indigenous people of Sarayaku v. Ecuador* (2012) related to indigenous and tribal communities or peoples, the Court had found violations to rights of ‘members’ of indigenous or tribal communities and peoples.<sup>30</sup> However, in the *Sarayaku* case, the Court broadened its understanding of collective rights, and clearly stated that “international law on indigenous or tribal communities and peoples recognizes rights to the peoples as collective subjects of international law and not only as members of such communities or peoples. In view of the fact that indigenous or tribal communities and peoples, united by their particular ways of life and identity, exercise some rights recognized by the Convention on a collective basis, the Court points out that the legal considerations expressed or indicated in this Judgment should be understood from that collective perspective.”<sup>31</sup>

18. The ACmHR in the case *Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) v. Kenya* recognizing that the

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<sup>27</sup> ECtHR, *Republican Party of Russia v. Russia*, 2011, § 105; *Zhechev v. Bulgaria*, 2007, ¶ 56; *National Turkish Union Kungyun v. Bulgaria*, 2017, ¶ 4.\1.

<sup>28</sup> “These attributes distinguish gatherings protected by freedom of association from mere gatherings of people wishing to share one another’s company, or transient demonstrations, which are separately protected by the freedom of assembly. See McBride, Jeremy, *International Law and Jurisprudence in Support of Civil Society, Enabling Civil Society, Public Interest Law Initiative*, 2003, pp. 25-26. See also Appl. No. 8317/78, *McFeely v. United Kingdom*, 20 DR 44 (1980), n. 28, at 98, in which the European Commission on Human Rights described freedom of association as being “concerned with the right to form or be affiliated with a group or organization pursuing particular aims.”” International Center for Not-for-Profit Law (ICNL) and World Movement for Democracy Secretariat at the National Endowment for Democracy (NED), [Civil Society - Principles and Protections Defending Civil Society](#), *The International Journal of Not-for-Profit Law*, Volume 14, Issue 3, September 2012.

<sup>29</sup> Gonzalo Monge Núñez and Víctor Rodríguez Rescia, [Acceso a la Justicia de Grupos en Situación de Vulnerabilidad Manual General de Litigio en el Sistema Interamericano con enfoque diferenciado: Niñez y adolescencia, pueblos indígenas y afrodescendientes](#), Instituto Interamericano de Derechos Humanos (October 2014)

<sup>30</sup> Jorge Calderón Gamboa, [Avances, aproximaciones y desafíos emergentes en el reconocimiento de los derechos colectivos de los pueblos indígenas y tribales en la jurisprudencia de la corte interamericana de derechos humanos](#), in *La Protección de los Grupos en Situación de Vulnerabilidad en el Sistema Interamericano de Derechos Humanos*.

<sup>31</sup> IACtHR, *Case of the Kichwa indigenous people of Sarayaku v. Ecuador*, Judgment of June 27, 2012 (Merits and reparations), [Serie C No. 245](#) ¶ 231

concepts of “peoples” and “indigenous peoples/communities” are contested terms<sup>32</sup> and intentionally left undefined in the Charter, set out four criteria for identifying indigenous peoples based on its Working Group of Experts on Indigenous Populations/Communities. It also noted “that the African Charter, in Articles 20 through 4, provides for peoples to retain rights as peoples, that is, as collectives.”<sup>33</sup> Furthermore the Commission stated that while the terms “peoples” and “indigenous community” provoke emotive debates “some marginalised and vulnerable groups in Africa are suffering from particular problems. It is aware that many of these groups have not been accommodated by dominating development paradigms and in many cases they are being victimised by mainstream development policies and thinking and their basic human rights violated.”<sup>34</sup> This jurisprudence has been confirmed by the African Court on Human and Peoples’ Rights in the case of African Commission on Human and Peoples’ Rights v Kenya, in which the African Court recognized the Ogiek community as indigenous peoples that are entitled to enjoyment of their rights as a collective.<sup>35</sup>

19. Finally, the Inter-American Court has recognized other communities (apart from indigenous peoples and Afro-descendants) as rights-holders. For example, in the precautionary measures granted to the Peace Community of San José de Apartadó in Colombia, the Court found that the case had “special characteristics that differentiate it from the precedents taken into account by the Court.” Specifically, it indicated that the Peace Community of San José de Apartadó, “constitutes an organized community, located in a determined geographic place, whose members can be identified and individualized and that, simply by being part of said community, all its members are in a situation of equal risk of suffering acts of aggression to their personal integrity and their lives.”<sup>36</sup> Based on this criterion, the Court granted the provisional measures and specified that the collective definition of the beneficiaries of these provisional measures met three criteria: “(i) their membership in the Peace Community, (ii) their geographical location in the municipality of Apartadó and (iii) the situation of grave danger they are in because they are members of said Community.”<sup>37</sup>

#### IV. THE MOVIMENTO DOS TRABALHADORES SEM TERRA (MST)

20. The Movimento Dos Trabalhadores Sem Terra [hereinafter “MST” or “the Movement”] was established in the 1980s, becoming one of Brazil’s oldest social movements. It is currently represented in all five regions of the country, and in, at least, 24 states.<sup>38</sup> The

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<sup>32</sup> ACmHPR, 276/03: Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) / Kenya (November 25, 2009), ¶ 147

<sup>33</sup> ACmHPR, 276/03, ¶ 150

<sup>34</sup> ACmHPR, 276/03, ¶ 148

<sup>35</sup> [African Commission on Human and Peoples’ Rights v Kenya, Application No 006/2012, Judgement](#) (26 May 2017) ¶103-113.

<sup>36</sup> IACtHR. *Matter of the Peace Community of San José de Apartadó regarding Colombia*. Provisional Measures. Resolution of the Inter-American Court of Human Rights of November 24, 2000, Recital 7.

<sup>37</sup> IACtHR. *Matter of the Peace Community of San José de Apartadó regarding Colombia*. Provisional Measures. Resolution of the Inter-American Court of Human Rights of June 26, 2017.

<sup>38</sup> Website of Movimento Dos Trabalhadores Rurais Sem Terra <https://mst.org.br/quem-somos/>

main objectives of the MST are to fight for land, agrarian reform and for social changes in the country.<sup>39</sup> The MST was created as a result of a historical process, and the collective resistance of rural and marginalized communities (self-identified as Sem Terra) against the segregation, exclusion and exploitation that has historically characterized the life of rural communities in Brazil, and that deepened even more, following the development model of latifundia adopted in the country.<sup>40</sup>

21. The MST organized itself in order to design and implement strategies for the land struggle, aiming at agrarian reform, and social transformation. Its members share a historical struggle, similar experiences, and the same objectives; their exchanges create space for political socialization, and for building a collective identity that allows them to pursue the vindication of their rights.<sup>41</sup> The Movement was born from the occupation of the land and has in this action its instrument to fight against land concentration and the State itself, by imposing on the government the implementation of a policy of rural settlements.<sup>42</sup> Yet, the objective does not end there, for once settled in occupied land, the settled families organize themselves in units or sectors to continue to fight for the achievement of several other basic rights.<sup>43</sup> Though in principle, the conquest of the land is the main objective towards the realization of agrarian reform, new objectives naturally follow, including, the fight for basic rights and social transformation. The latter speaks as to the permanence and continuity of the MST as a cohesive group of people, politically organized for the collective vindication of the rights of its members.
22. The members of the MST execute a form of social resistance that wouldn't be possible - or effective - without the collective element. What gives legitimacy to their individual fights, is their belonging to a representative social movement of shared historical resistance, in support of the same objectives, namely, land struggle, agrarian reform and social transformation. Thus, the collective is the catalyst of the individual demands. The individuals are organized in a cooperative and structural regime to vindicate collective rights that will have individual repercussions. It is also worth noting that through their association within the Movement, the individuals exercise their rights to freedom of expression and assembly and association. In sum, it is through the MST that the Sem Terra, as a vulnerable and excluded group, effectively exercise their political rights as citizens. The latter is a consequence of the social identity formed from the social struggle and political participation carried out by the group (to recover the lands that were historically denied to them, and then reaffirm other rights through political

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<sup>39</sup> Website of Movimento Dos Trabalhadores Rurais Sem Terra <https://mst.org.br/quem-somos/>

<sup>40</sup> For a historical overview see, Bernardo Mançano Fernandes, *A Formação do MST no Brasil*, Vozes, 2000. See also, the Website of MST, [A História da Luta Pela Terra](#),

<sup>41</sup> See, Luis Antonio Pasquetti, *Universidade de Brasília, Terra Ocupada: Identidades Reconstruídas (1984-2004)*, 2007, pp. 113-116; 124-127.

<sup>42</sup> Bernardo Mançano Fernandes, [A Territorialização Do MST - Movimento dos Trabalhadores Rurais Sem Terra – Brasil](#), 2012, pp. 10-17, 23-25, 33-34.

<sup>43</sup> As described by the Movement itself, the settled families remain within the movement, organizing themselves in a participative and democratic manner: Website of Movimento Dos Trabalhadores Rurais Sem Terra <https://mst.org.br/quem-somos/>. This organization is replicated at the local, state and national levels: a unit or sector is formed, settlement coordinators are chosen to represent the unit, and everyone has the right to vote in the assemblies where the decision-making processes take place. Every five years the MST also celebrates a National Congress to discuss strategies and hear the needs of the different local and state units. see, Bernardo Mançano Fernandes, pp. 170-173.



participation). It is their membership to that group that allows them to effectively practice their citizenship.

23. Within the MST, and through its own organization, there's a form of democratic governance, and economic participation, as well as interdependence between its members. There's also a conquest of legitimacy through the social practices that are developed within the MST as a collective, namely, vindication of their rights, the construction of spaces that allow them to redefine public policies, new forms of social organization, and the emergence of new social and political actors.
24. The MST is the conduit that allows the individuals to translate their needs into demands, these demands are then recognized by the public power (due to social pressure, and collective strategies, for example, protests, demonstrations).<sup>44</sup> These actions highlight a collective agency and a political agenda of vindication of rights, but also, a recognition of the legitimacy of the MST as a representative of these demands. Through this process emanates a civic and political identity and recognition. The Sem Terra, as members of the MST, go from occupying, in addition to the land, an immaterial political space.
25. The fact that the MST has been recognized as the legitimate representative of the Sem Terra in Brazil, through the different interactions with the public powers, is a significant element, and reveals that the fight against their exclusion, and the omissions of the Brazilian State cannot occur without the organized collective action of the Sem Terra themselves, as members of the MST.

## **V. FREEDOM OF ASSOCIATION OF THE MST MUST BE RECOGNIZED AND GUARANTEED AS A RIGHT OF ITS INDIVIDUAL MEMBERS BUT ALSO OF THE MST AS A COLLECTIVE**

26. The recognition of collective organizations as legitimate representatives of the rights and interests of individuals, has been favorably outlined by the *Supremo Tribunal Federal* (STF) in two recent decisions: ADPF 709 and ADPF 742. In the first case, the STF recognized the organization Articulação dos Povos Indígenas do Brasil (APIB) legal standing to present an ADPF (a form of constitutional review) before the STF. Historically, this form of constitutional control had been reserved to the entities expressly named in article 103 of the Constitution, and the Federal Law n. 9882/1999, which include the term "national class entities" (entidade de classe do âmbito nacional). The latter had traditionally been understood as those entities that grouped together people who shared the same professional or economic activities. However, in its ADPF 709 individual decision, Ministro Barroso (*rapporteur*) argued that this interpretation reduced the opportunities for the STF to act in the protection of fundamental rights, since it did not recognize the legitimacy of associations defending rights. In this sense, it

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<sup>44</sup> In 1997, over 100.000 people congregated in the capital in support of the MST; in 1999 over 1000 members of the MST and other movements walked to Brasilia, traveling by foot for over 72 days. The march was organized by different movements and unions. The goal was to educate the population about the MST's and other movements' plans for a social transformation in Brazil; in 2005, a new protest took place to pressure Lula's government to implement the National Plan for Agrarian Reform, this protest accomplished the prioritization of agrarian reform in the political agenda. MST, [Relembre 4 marchas históricas do MST](#) (Feb 17, 2022).

expanded the meaning attributed to the expression class entities, under the terms of the Federal Constitution, understanding them as the set of “people linked by the same economic, professional activity or, still, by the defense of interests’ of vulnerable and/or minority groups whose members are part of them.”<sup>45</sup> Moreover, he added that the absence of APIB’s constitution as a legal person was not an impediment for its admission to exercise the active constitutional control.<sup>46</sup> [translation our own].

27. Likewise, in ADPF 742, the STF recognized the *Coordenação Nacional de Articulação das Comunidades Negras Rurais Quilombolas* (Conaq) as a national class entity, recognizing its legitimacy to act before the Court in representation of its members.<sup>47</sup> The ADPF also recognized the right to implement specific measures to combat Covid-19 given the social vulnerability of quilombolas communities, and ordered the State to include the Conaq in the preparation of a national plan to combat the Covid-19 pandemic for the quilombola population, including a working group. This shows that the STF not only recognized the active legitimacy of Conaq in the specific case, but also its legitimacy as a representative of the interests and fundamental rights of a vulnerable part of the population that is deserving of State recognition, and that should be included vis-a-vis other entities in the planning and execution of a plan that would affect the community they represent.
28. Similarly to APIB and Conaq, the MST, as the largest workers social movement in Brazil - and Latin America,- represents, at the national level, those who identify as Sem Terra, as a result of being the entity that fights for and represents the interests and rights of these communities. Therefore, the MST is equivalent to the class entities recognized in the Brazilian Constitution pursuant to art. 103, as interpreted by the STF in ADPF 709 and 742. These qualities grant the MST a formal recognition and legitimacy, regardless of their constitution as a legal entity with legal personality.
29. Finally, to recognize the value of the exercise of fundamental rights by the Sem Terra is to consider its individual and collective dimension. This group of people who developed their own relationships and established among themselves ways of living, organizing and expressing themselves, represent a form of resistance that has spanned years. Through the association and participation within the MST, its members are able to assert their rights, preserve their identity and the effective exercise of their citizenship.
30. Through effective strategies, that include occupation, settlements, and encampments, as well as marches and other forms of protests, the MST has also established new terms of relation between rural workers and the State. The latter has been “forced” to recognize, whether tacitly or expressly, the legitimacy of the MST as an organization defending the

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<sup>45</sup>ADPF 709/DF, voto do Min. Rel. Luís Roberto Barroso, julgamento em 08/07/2020, DJ de 10/07/2020

STF. ADPF 709. Decisao Monocratica Min. Luis Roberto Barroso. 10/07/2020, pp. 10-12. In his reasoning Barroso stated that “it cannot be expected that such peoples organize themselves in the same way that we organize ourselves” and that “to ensure respect for their customs and institutions means respecting the means by which they organize themselves, in light of their culture” [translation our own].

<sup>46</sup> STF. ADPF 709. Plenário. 3/08/2020, pp. 1-2; 5; 19-20; 117-118

<sup>47</sup> STF. ADPF 742 MC/DF voto do Min. Rel. Marco Aurélio, julgamento em 24/02/2021, publicação em 29/04/2021, pp. 22-23. “To restrict the concept of class entity implies, to reduce the potential for the Supreme Court’s interaction with civil society, to undermine the democratic character of constitutional jurisdiction, to the detriment of the Constitution.” [Translation our own]

interests of its members.<sup>48</sup> As a result of this recognition, criminalization has also arisen. The targeting, harassment and criminalization of social movements in Brazil is a historical phenomenon.<sup>49</sup> This criminalization includes different forms of physical and ideological violence, as a form of domination of the movements that seek social transformation. In this sense, the IACmHR in the case *Camargo v. Brazil* noted that:

“the people in Brazil who direct and pursue the claims of rural workers are those most directly affected, since they are targeted as examples in order to dissuade others involved in the claims. The acts of violence committed against them are intended to create widespread fear and, consequently, dissuade other human rights defenders and to intimidate and silence the victims’ claims and demands.”<sup>50</sup>

31. Particularly, there is ample evidence that indicates the existence of a systematic persecution and criminalization of those individuals identified as members of the MST.<sup>51</sup> For example, in the 1990s and early 2000s the index of violence against leaders and members of the MST increased exponentially, as a direct consequence of the organized actions of the MST that helped them gain recognition and notoriety.<sup>52</sup> This violence included excessive use of force against peaceful protesters, illegal surveillance, repression, and killings by private and State agents.<sup>53</sup> Members of the MST also reported to being targeted and repeatedly searched in public spaces in an abusive and discriminatory manner by State agents simply for wearing symbols that represented the movement.

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<sup>48</sup> For example, the MST affirms that over 450.000 families linked to the Movement have been settled in over 24 states of Brazil. During the Lula government, between 2003 and 2006 alone, 245,061 families benefited from the expropriation of land for settlements, the recognition of the rights of traditional communities, the resettlement of families affected by dams and land reordering. Moreover, the MST has been recognized nationally (i.e. Câmara Municipal de São Paulo) and internationally (i.e. OIT). See, MST, [Com reforma agrária paralisada, nenhuma desapropriação de terra é feita em 2021](#), (Aug, 20, 2021); See, Brasil de Fato, [Conheça a produção de alimentos do MST, que recebe a maior honraria da Câmara de SP](#), 2019; Brasil de Fato, [MST vence prêmio internacional por atuação na garantia de condições dignas para a população](#), 2021.

<sup>49</sup> See for example, the criminalization of the Canudos, the Ligas Camponesas, and more recently, the Movimento dos Trabalhadores Rurais Sem Terra. Refer to, *A Contra Corriente*, Vol. 6, No. 1, Fall 2008, 112-158.

<sup>50</sup> IACHR, [report N. 25/09](#), case 12.310, march 19, 2009. Admissibility and Merits. ¶ 46.

<sup>51</sup> For instance, during his campaign and presidency, Jair Bolsonaro has repeatedly referred to the MST - the largest and most articulated social movement in Latin America - as a “terrorist organization,” even though, the Movement formally disapproves of armed conflict and has never promoted attacks against civilians and authorities. This narrative resulted in different attempts aimed at criminalizing social movements through the use of counterterrorism laws. See, Felipe Betim, El País, [As várias faces do MST, o movimento que Bolsonaro quer criminalizar](#), 2018; see, Caroline Oliveira, [Tentativa de Criminalizar por meio da Lei Antiterrorismo não intimidara MST](#), 2022; see CPT, No RN, [Sem Terra denunciam violência no campo e são reprimidos pela polícia](#), 2017.

<sup>52</sup> To read more about documented cases of violence against members of the MST see, Comissão Pastoral da Terra do Paraná, *Desterro – uma cronologia da violência no campo no Paraná na década de 90*, 2006; *Terror no Paraná*, Caros Amigos, nº 27, junho de 1999. See also, Roberto Efrem Filho, [O MST as últimas trincheiras da Democracia](#), 2016.

<sup>53</sup> See, for example, On the killing of a member of the MST: Corte Interamericana de Derechos Humanos, *Caso Garibaldi vs. Brasil*, Exceções Preliminares, Mérito, Reparações e Custas, 23 de setembro de 2009. On illegal wiretapping of members of the MST: Corte Interamericana de Derechos Humanos, *Escher e outros vs. Brasil*, Exceções preliminares, Méritos, Reparações e Custas, 6 de julho de 2009.

32. The use of symbols is a determining aspect in the existence of the MST,<sup>54</sup> the symbols are the material representation of the struggle that unites them, and form a means of expression and communication closely linked to their identity, both individual -as Sem Terra-, and collective, -as members of a socio-political unit, the MST. These symbols are part of the construction of the Movement's political identity. Thus, when individuals are criminalized, stigmatized or persecuted for wearing these symbols, the Movement as such is being criminalized, stigmatized and persecuted.
33. This honorable Court has already recognized some communities as a collective and expanded the spectrum of protection of the right to freedom of association in favor of those groups as "collective subjects."<sup>55</sup> For example, the Court has recognized Indigenous Peoples,<sup>56</sup> Afro-descendants, and other communities<sup>57</sup> as collective rights-holders given specific circumstances.
34. The MST is a group if we consider the above-mentioned UN standards.<sup>58</sup> This group is also composed of a historically vulnerable and marginalized portion of the population who have suffered human rights violations, as a result of its membership to the group. Moreover, the Brazilian State has recognized the MST, formally and tacitly by engaging with it as a group that represents the interests and rights of its members; the State has also criminalized and persecuted the Movement and its members as a result.
35. Under International law it is already well-established that the right to freedom of association also protects associations without legal personality. The MST as a group decided not to form as a legal entity as part of its resistance and to avoid more control and criminalization from the State. Nonetheless, this does not preclude them from being protected.
36. In that vein, we firmly believe that the MST, as the legitimate representative of a vulnerable portion of the population, recognized as a group under international and national standards, and as a target of ongoing criminalization, and persecution -in the pursuit of the MST's objectives - should be recognized and protected as a victim and rights holder by this Honorable Court.

## VI. CONCLUSION

37. As mentioned above, Brazil is a party to several international human rights instruments which explicitly guarantee the rights to freedom of expression, association and peaceful assembly. These rights allow people to have a voice and to organize collectively to defend

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<sup>54</sup> MST, [Nossos Simbolos](#).

<sup>55</sup> IACtHR, *Case of the Kichwa indigenous people of Sarayaku v. Ecuador*, Judgment of June 27, 2012 (Merits and reparations), [Serie C No. 245](#) ¶ 231

<sup>56</sup> IACtHR, *Case of the Kichwa indigenous people of Sarayaku v. Ecuador*,

<sup>57</sup> IACtHR. *Matter of the Peace Community of San José de Apartadó regarding Colombia*. Provisional Measures. Resolution of the Inter-American Court of Human Rights of June 26, 2017.

<sup>58</sup> UN Human Rights Council, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, UN Doc. [A/HRC/29/25](#), 28 April 2015.

their rights and interests; and as UN Special Rapporteur Clément Voule stated: “their actions in the public domain help to tackle the barriers of exclusion.”<sup>59</sup> This is particularly true for a movement that arose from the depths of a dictatorial regime, aiming, among other things, at the transformation of political subjects capable of participating in a new-found democracy.<sup>60</sup>

38. Once again, the MST is the largest workers movement in Brazil and Latin America, representing the rights, interests, and shared resistance of a historically marginalized population. The MST is a form of sociopolitical organization which finds in the fundamental right to freedom of association the basis for its collective representation. This is no small feature, for it is through their association that the MST’s members find the most effective way to protect their rights and exercise their citizenship in a context that has been and continues to be averse to them.
39. Members of the MST find in their association a space of shared resistance and memory, but also the strongest tool to fight for their rights. As such, the movement has made the conscious and political decision not to constitute itself as a “legal person” (akin to political parties and unions, even if some of their objectives overlap). This decision is, in part, a strategy to achieve the Movement’s objectives, and a direct consequence of the criminalization and persecution it has been subjected to since its inception.
40. In submitting this Amicus brief, we strongly believe that the MST’s right, as a collective, to be recognized as a victim and rights-holder should not derive from its formal constitution as a legal person. A restrictive interpretation of this kind would entail a blow to the right to freedom of association, which exercise should not depend on the legal personality of the MST.<sup>61</sup> Further, this would impose an organizational model that is alien to the collective identity and strategy of the Movement and the individuals that shape it. The latter would be particularly jeopardizing for a Movement that has been representing –for over three decades– historically excluded and vulnerable members of the population. As stated before, the MST as a group shares a history, a clear structure and objectives, and as such, deserves recognition and protection, regardless of its legal constitution. The UN and the African Commission have been clear in this respect.<sup>62</sup>
41. We invite this Honorable Court to assert the right to freedom of association of collectives, such as MST, that legitimately represents the interests and rights of historically marginalized communities. This is a prescient opportunity for this Court to further develop its jurisprudence on these matters and strengthen the protections for historically excluded and vulnerable communities and to reaffirm their collective

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<sup>59</sup> *Report of UN Special Rapporteur Clément Voule of 2018* ¶ 8.

<sup>60</sup> For a historical overview of the MST please refer to Bernardo Mançano Fernandes, *A Formação do MST no Brasil*, Vozes, 2000.

<sup>61</sup> ECtHR, *Republican Party of Russia v. Russia*, 2011, § 105; *Zhechev v. Bulgaria*, 2007, ¶ 56; *National Turkish Union Kungyun v. Bulgaria*, 2017, ¶ 4.\1

UN Human Rights Council, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, UN Doc. [A/HRC/29/25](#), 28 April 2015, ¶ 59.

ACmHPR, *Report of the Study Group on Freedom of Association & Assembly in Africa*, 2014, III.C.4. ¶8

<sup>62</sup> ACmHPR, *Guidelines on Freedom of Association and Assembly in Africa* (November 2017), p.9. UN Human Rights Council, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*, UN Doc. [A/HRC/29/25](#), 28 April 2015, ¶ 59.

representation in the form and shape that they judge fit to achieve the effective protection of their rights.

## **SIGNATORY ORGANIZATIONS**

**Robert F. Kennedy Human Rights (RFKHR)**<sup>63</sup> is a non-governmental organization, dedicated since 1968 to advancing the legacy of former United States Attorney General Robert F. Kennedy and the promotion of human rights around the world, including Latin America. Through its international advocacy and litigation program, RFKHR monitors and promotes democracy and the rule of law, and protects the fundamental political freedoms of human rights defenders and activists. All this through advocacy activities and strategic litigation in close collaboration with local actors. One of the fundamental pillars of our mandate is the protection of civic space and fundamental freedoms.

**The Centre for Human Rights**,<sup>64</sup> a hybrid institution that functions as an academic department of the Faculty of Law, University of Pretoria, and a non-governmental organisation (NGO), was established in 1986 in Pretoria. The Centre works towards human rights education in Africa and the realization of the rights of women, children, people living with HIV, people with disabilities, indigenous peoples and other disadvantaged groups. The Centre was granted observer status before the African Commission on Human and Peoples' Rights (African Commission) in 1993.<sup>65</sup>

**Odhikar**<sup>66</sup> is a human rights organization based in Dhaka, Bangladesh established on 10 October 1994 by a group of human rights defenders, to monitor human rights violations and to create wider awareness to establish justice. It holds special consultative status with the ECOSOC of the United Nations.

**The National Union of Institutions for Social Action Work (UNITAS)**,<sup>67</sup> created in 1976 in Bolivia, as a human rights defender organization, is a non-profit national platform of 22 NGOs who develop different programs to promote new development paradigms as a better response to the national context, more public debate focused on human rights and development, based on democratic principles, the structural causes and the symptoms of poverty and inequality, and an enabling environment for civil society organizations, to ensure the appropriate conditions to contribute to development, and the observance of human rights, fundamental freedoms and democracy.

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<sup>63</sup> <https://rfkhumanrights.org/>

<sup>64</sup> <https://www.chr.up.ac.za/>

<sup>65</sup> <http://www.achpr.org/network/ngo/133/>.

<sup>66</sup> <http://www.odhikar.org/>

<sup>67</sup> <https://redunitas.org/>

**Kazakhstan International Bureau For Human Rights and Rule of Law (KIBHR)**,<sup>68</sup> established in 1993, has grown into one of the largest human rights organizations in Kazakhstan. With ten regional branches all over the country, KIBHR promotes the protection of civil and political rights and contributes to democratic development, rule of law and civil society building through education, monitoring (data collection, analysis and spread of information), and engaging in advocacy.

**The International Service for Human Rights**<sup>69</sup> is an independent, non-profit organization promoting and protecting human rights. Our mission is to support human rights defenders, strengthen human rights systems, as well as lead and participate in coalitions for human rights change. We believe that no matter who we are or where we come from, no matter the differences between cultures, as human beings, we all share the same humanity. We all wish to live in peace, be respected, be surrounded by our loved ones in a safe and fair environment, and with opportunities to lead our lives in dignity.

**IHRDA**<sup>70</sup> is a pan-African non-governmental organization (NGO) working to promote awareness of human rights in Africa and improve the effectiveness of the African Human Rights system. IHRDA envisions an African continent where all have access to justice via national, African and international human rights mechanisms. IHRDA engages in strategic human rights litigation before the African Court on Human and Peoples' Rights, the African Commission on Human and Peoples' Rights (ACHPR), the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) and the ECOWAS Community Court of Justice, and has successfully litigated cases before these regional human rights bodies.

**The Centre for Human Rights and Democracy in Africa (CHRDA)**<sup>71</sup> is a non-governmental, apolitical and non-profit organization that was created in 2005 with a focus on the advancement of human rights and the promotion of democracy as a political culture in Africa. CHRDA engages in sensitive issues relating to the advancement of human rights and democracy via its various units such as the legal which takes up pro bono cases as a means to advocate for social, economic and political change. CHRDA through its advocacy and litigation program has been able to advance the rule of law and access to justice by monitoring, documenting and reporting human rights violations and abuses within and without the continent using both international and local partners in its quest of leaving the world better than the way they met it.

**The Center for Alternatives to Development (CEALDES)**<sup>72</sup> is a non-profit organization made up of an interdisciplinary team of professionals in the social, environmental and basic sciences that seeks the participatory creation of alternatives to socio-environmental conflicts typical of the current development model. We have focused our efforts on the transformation of conflicting socio-environmental realities based on the

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<sup>68</sup> <https://bureau.kz/en/>

<sup>69</sup> <https://ishr.ch/>

<sup>70</sup> <https://www.ihrda.org/>

<sup>71</sup> <https://www.chrda.org/#:~:text=The%20Centre%20for%20Human%20Rights,a%20political%20culture%20in%20Africa.>

<sup>72</sup> <https://www.cealdes.co/>

organizational strengthening of rural and urban communities in the country, in regions of special ecological importance, for the appropriation and care of the territories and nature.

***JOINT-Ligas de ONGs em Moçambique***<sup>73</sup> is a non-profit organization, endowed with legal personality, financial and patrimonial autonomy, created in 2007 and made official in 2008, with the aim of strengthening the role of Mozambican civil society and its participation in the processes and socioeconomic development of the country.

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<sup>73</sup> <https://www.joint.org.mz/page>