

URGENT Action



0611UBRA,

Brazil:

11.07.2006

Peasants in Lagoa Nova, Sergipe, demand withdrawal of sugar cane company from their legitimate land

Since 1991, the agricultural company SANAGRO, one of the biggest producers of sugar cane in the north-east of Brazil, has been trying to keep off 90 peasants' families of the Lagoa Nova community from the land which legally belongs to these families, in the north-east of Brazil. In 1994, the Brazilian government expropriated the land in order to redistribute it to small peasants in accordance to the agrarian reform programme. During the expropriation process, the SANAGRO company, who was tenant of the land at that time, succeeded in being officially recognized as the previous owner of the land. For 12 years now, SANAGRO has been using its political and economic influence in order to stop the process of expropriation. Most of all, it has blocked the transfer of the land to the agrarian reform institute INCRA by repeatedly seeking appellate remedy. Several times, one of the judges of the Brazilian Supreme Court of Justice has ruled in favour of the company, i. e. against the legal situation.

Background

Since the colonial period, agriculture on the north-eastern coast of Brazil has been dominated by sugar cane plantations. Sugar cane production and its processing into sugar and alcohol (used as "eco-fuel" and substitute for car petrol) has been dominated by a powerful elite, which also controls many government institutions. These oligarchies have considerable influence on the Brazilian government which depends on the export of agricultural products to pay Brazil's foreign debt. Although the Brazilian Constitution provides for the redistribution of land to small peasants in compliance with the agrarian reform, local oligarchies keep obstructing the implementation of this provision.

For many generations, the 90 peasants' families of the Lagoa Nova community in the state of Sergipe have been living on the land that is now disputed. It formally belonged to a large estate, which later came under agrarian reform. The SANAGRO Santana Agroindustrial Ltda. has been trying to evict the families off the land. In 1994, an area of 2,812 ha was expropriated by the Brazilian State in order to transfer it to the families in accordance with the agrarian reform programme, but SANAGRO continued to use 573 ha of the land for cultivating sugar cane. Even after the expropriation had taken place, the company built an irrigation system which has meanwhile contaminated a lake in the agrarian reform area. SANAGRO delayed the transfer of the land to the agrarian reform institute INCRA – which is supposed to be the next step in the agrarian reform process – until the year 2000. When the transfer finally took place, SANAGRO appealed in court against this measure, and judge Francisco Falcão from the Superior Court of Justice ruled in favour of the company. During this time and later in 2001, SANAGRO gunmen repeatedly menaced the families of Lagoa Nova.

In 2005, the First Chamber of the Supreme Court of Justice ruled even twice against SANAGRO and in favour of the expropriation. Interestingly enough, one of these two decisions was prepared by judge Francisco Falcão. Yet in November 2005, this judge once again ruled in favour of SANAGRO by issuing a temporary injunction. This is a decision the judge can take without asking the First Chamber for approval.

Being faced with the standstill in the legal proceedings and exhausted by the years of waiting, the families of Lagoa Nova protested in December 2005 by stopping the pumps of SANAGRO's irrigation system. As a result of this protest, a contract was firmed that allows SANAGRO to continue to use water from the lake for irrigation purposes (observing environmental protection constraints). In return, the company was to withdraw from the disputed territory, abandon its sugar cane cultivation in this area and revoke all legal remedy lodged against the INCRA. Yet SANAGRO has not fulfilled this contract and has tried several times to re-cultivate the land, which, however, has been prevented by the peasants. SANAGRO reacted by taking the peasants to the local court under false pretences. And again, it was judge Francisco Falcão who interfered and – against common law practice – personally put pressure on the local judge in charge, Mario Jambo, to decide in favour of SANAGRO.

Apparently, this Supreme Court judge is the decisive instrument for SANAGRO to achieve the company's objectives. As early as April 2001, FIAN had started an urgent action addressed to this judge, and several follow-up letters have been written by the International Secretariat of FIAN and the FIAN groups in Munich/Berlin and Stockholm – without any response. The judge is neither willing to speak with Brazilian representatives; neither the INCRA nor the national Rapporteur on the Human Right to Food, Flávio Valente, have been granted an appointment. This is why the National Commission of Justice – which was established in 2005 with the task to safeguard the independence of the Brazilian legal system and to receive complaints – is now asked to examine the judge's behaviour.

FIAN – With human rights against hunger!

FIAN Mandate

As a state party to the International Covenant on Economic, Social and Cultural Rights, Brazil is duty-bound to protect and fulfil the human right to feed oneself for all of its population. For rural communities like Lagoa Nova, the legal guarantee for their access to land is utterly important in order to ensure their livelihood on a permanent basis.

Call to Action

An urgent action is needed in order to stop this arbitrary abuse of the legal system and to prevent the conflict from escalating. Please write polite letters to the National Council of Justice in Brazil. Please send your letter to the National Commission of Justice, and a copy to the local judge in charge. Please also send a copy to the non-governmental organization Centro Dom José Brandão de Castro. The aim of this action is also to support the upcoming fact-finding mission and public hearing that will be held by the national Brazilian Rapporteur on the Human Right to Food, Flávio Valente.

End of Action:

**31. of August,
2006**

Addresses:

Paulo Lôbo
Conselho Nacional de Justiça
Praça dos Três Poderes, Anexo II –
Cobertura – Sala 650
Brasília – DF
CEP 70175-800
Brazil
Fax: ++ 55 (61) 3217-3999
Mail: paulolobo@cnj.gov.br

Copies to:

Mário Azevedo Jambo
3ª Vara da Justiça Federal em Sergipe
Forum Min. Geraldo Barreto Sobral
Centro Administrativo
Aracaju – SE – CEP 49080-902
Brazil
Fax: ++ 55 (79) 3216-2215
Mail: mjambo@jfse.gov.br

Centro Dom José Brandão de Castro

Rua Guaporé, no 616

Siqueira Campos

Aracaju – SE

CEP 49075-290

Brazil

Fax: ++ 55 (79) 3259-6971 / 6928

Mail: cdjbc@cdjbc.org.br

Translation

Re: Petition to investigate the decision of Justice Francisco Falcão, rapporteur on the protective injunction nº10.841 in the special procedure nº628.660/ SE de 2004, before the National Council of Justice

Dear Mr.Lôbo,

Recently I heard about a severe situation which involves landless families of the settlement of Independência Nossa Senhora do Carmo, in Lagoa Nova/Pacatuba, Sergipe. The area of the settlement had been expropriated in 1994 under the agrarian reform. Alas, until today the settlement project has not been implemented, because it was blocked by various court actions. In this context, Francisco Falcão, the president of the first bench of the National Council of Justice, seems to attend more to the particular interests of SANAGRO Santana Agroindustrial Ltd, a sugar company and producer of alcohol, than the principles of law.

Since 1991 the agrobusiness corporation has been harassing the families. In 2000, when the National Institute for Agrarian Reform (INCRA) issued the land title, the corporation approached the Supreme Council of Justice with a complaint (Rcl 856/SE) against the issuance of title, and on 8/11/2000, Justice Francisco Falcão gave relief to them to stop the issuing of titles.. In this period and during 2001, gunmen of SANAGRO harassed the families several times.

In the last year there were two judgements of the first chamber of the National Council of Justice in favour or the expropriation. Nonetheless in November 2005, Justice Falcão fell behind his earlier decision REsp 628.660 and granted relief to the protective injunction (MC 10.841/SE), and suspended the issuance of titles once again. How can a Justice, in a lonely decision, can turn upside down two prior decisions of the first chamber?

It is clear that SANAGRO corporation tries to delay and entangle the judicial proceedings, even though there is already a final judgement. The Brazilian judiciary should not permit such a behaviour, which puts in doubt the transparency and efficiency of the Judiciary. A justiça brasileira não pode permitir tal conduta, que coloca em dúvida a transparência e a eficiência do Poder Judiciário na concessão dos direitos aos interessados que sofrem com a demora.

Brazil is a state party to the International Covenant on Economic, Social and Cultural Rights, ratified in 1988 in article 5º § 2º of the constitution and thereby undertook the obligation to protect and fulfil the right to adequate food to its population. Legally protected access to land is an essential precondition for the rural communities to sustainably realize their right to food. I therefore ask the National Council of Justice for an urgent revision of the decision by Justice Francisco Falcão, in order to allow INCRA to handover the titles once and for all in order to fulfill the economic and social human rights of the landless living their.

Please, keep me informed of the measures you have taken.

Yours sincerely

**Please inform FIAN
International about any
response you receive
to your faxes and letters.**



FIAN International Secretariat
P.O. Box 10 22 43
D-69012 Heidelberg
Tel: +49.6221 653 00 30
Fax: +49.6221 830 545
email: kuennemann@fian.org
http: www.fian.org

FIAN – With human rights against hunger!

Paulo Lôbo
Conselho Nacional de Justiça
Praça dos Três Poderes, Anexo II –
Cobertura – Sala 650
Brasília – DF
CEP 70175-800
Brazil
Fax: ++ 55 (61) 3217-3999
Mail: paulolobo@cnj.gov.br

Exmo. Senhor Lôbo,

Re: Pedido de investigação da decisão do Ministro Francisco Falcão, relator da Medida Cautelar nº10.841 no Recurso Especial nº628.660/ SE de 2004, no Superior Tribunal de Justiça

recentemente, recebi informações sobre a precária situação que envolve as famílias de posseiros(as) do Assentamento Independência Nossa Senhora do Carmo, em Lagoa Nova/Pacatuba, Sergipe. A área do assentamento foi desapropriada para fins de reforma agrária em 1994. Mas até hoje, a realização do Projeto de Assentamento está sendo impedido por várias ações jurídicas. Neste contexto, o Ministro Francisco Falcão, presidente da Primeira Seção do Superior Tribunal de Justiça, parece atender mais aos interesses particulares da SANAGRO Santana Agroindustrial Ltda, empresa açucareira e produtora de álcool, que aos princípios da lei.

A usina SANAGRO desde 1991, veio intimidando as famílias. Em 2000, quando o Instituto Nacional de Colonização e Reforma Agrária (INCRA) foi imitado na posse, ela recorreu ao STJ com uma reclamação (Rcl 856/SE) contra a imissão de posse, e no 8/11/2000, o Ministro Francisco Falcão concedeu liminar para sustar a imissão de posse. Nesta época e durante o ano 2001, pistoleiros da SANAGRO ameaçaram as famílias repetidas vezes.

No ano passado, houve dois julgamentos da Primeira Turma do STJ a favor da desapropriação. No entanto, em novembro 2005 o Ministro Falcão voltou atrás da sua própria decisão do REsp 628.660 e deu provimento a Medida Cautelar (MC 10.841/SE), novamente suspendendo a imissão de posse. Por quê será que o Ministro, em decisão monocrática, volta atrás de duas decisões da Primeira Turma tomadas anteriormente?

É claro que a empresa SANAGRO pretende atrasar e tumultuar o processo judicial, já com sentença definitiva. A justiça brasileira não pode permitir tal conduta, que coloca em dúvida a transparência e a eficiência do Poder Judiciário.

O Brasil é Estado parte do *Pacto Internacional dos Direitos Econômicos, Sociais e Culturais* da Organização das Nações Unidas (ONU), recepcionado pela Constituição de 1988, no artigo 5º, parágrafo 2º, e, desta forma, assumiu compromissos de proteger e garantir o direito à alimentação adequada a toda sua população. O acesso à terra, assegurado juridicamente, é condição essencial para que as comunidades rurais possam realizar, de forma sustentável e digna, seu direito à alimentação.

Por isso solicito ao Conselho Nacional de Justiça uma urgente revisão da decisão monocrática do Ministro Francisco Falcão, para conceder em definitivo a imissão da posse ao INCRA, garantindo, assim, os direitos humanos econômicos e sociais dos posseiros que ali residem.

Por favor, mantenha-me informado das medidas que forem tomadas.

Respeitosamente