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Brazilian Court Hands Down Historic Ruling Regarding Indigenous Lands

by LADB Staff

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Each April 19, Brazil celebrates the Dia do Indio, which the government established in 1943 to commemorate the historic Congreso Indigenista Interamericano held in Mexico three years earlier. In 2009, however, reaffirmation of indigenous peoples' rights took place a month earlier with the March 19 landmark decision by the Supremo Tribunal Federal (STF) upholding the contiguous demarcation of the Reserva Raposa/Serra do Sol, in the northern state of Roraima bordering Venezuela and Guyana.

The STF decision has ended a long legal dispute between rice growers who live in the area and the indigenous and defenders of their rights in civil society. The dispute has received wide coverage on the front pages of newspapers and in other news outlets in recent years, although the land conflict in the Reserva Raposa/Serra do Sol has gone on for decades.

Long history of false starts

In 1917, the government of Amazonas state (which included the present state of Roraima) set aside the area between the Cotinga and Surumu rivers for use and occupation by the Macuxi and Jaricuna peoples. Two years later, the Servico de Protecao aos Indios (SPI), an agency created in 1910, began to physically demarcate the land, which was already being invaded by farmers. However, this initial attempt at demarcation was not finished, and for decades occupation of the lands by non-Indians has continued (see NotiSur, 2008-08-15).

Finally, in 1977, the Fundacao Nacional do Indio (FUNAI), the agency that succeeded the SPI in 1967, established a Grupo de Trabalho Interministerial (GTI) with the objective of indentifying the boundaries of the indigenous zone. This work was also not completed, but two years later, after carrying out studies, a new GTI proposed demarcating 1.34 million hectares to guarantee indigenous rights there.

In 1984, the last year of the military regime that lasted two decades and approached the indigenous issue from the national-security-doctrine perspective, a new GTI identified as indigenous territory a total of 1.57 million ha, including Raposa and Serra do Sol as well as Xununuetamu, Surumu, and Maturuca.

New GTIs were formed in 1993 and proposed designating a 1.67 million ha area to guarantee the rights of the Macuxi, Wapichana, Taurepang, Patamona, and Ingar peoples, which number more than 18,000. Presidential decree brings more opposition. Meanwhile, outsiders continued settling in the area, and, in 1998, then justice minister Renan Calheiros signed Decree 820/98 creating Terra Indigena (TI) Raposa/Serra do Sol as a contiguous zone for permanent possession by the indigenous peoples.

The decision was criticized by the Roraima government and other sectors, but, on April 15, 2005, President Luiz Inacio Lula da Silva signed a decree approving the demarcation of TI Raposa/Serra do Sol, with 1.7 million ha. The decree said, "The Parque Nacional del Monte Roraima is public property of the state with the twofold legal purpose of preserving the environment and upholding the constitutional rights of the Indians."

In the same decree, the president stated that the armed forces are in charge of defending national territory and sovereignty and that the Policia Federal guarantee security and public order in the indigenous area to protect the constitutional rights of the indigenous. Thus, two days later, the Policia Federal began Operacao Upatakou to ensure that the demarcation took place, including removing non-Indians from the area. Rice growers in the area then began a series of protests.

On April 25, 2006, the Policia Federal began Operacao Upatakou II to remove rice growers who resisted the presidential decree. The growers filed appeals with the federal justice system to challenge approval of the Reserva Raposa/Serra do Sol as a contiguous zone, but actions by groups favoring the demarcation also increased. For example, one of the most well-known defenders of the rights of Brazil's indigenous, Tomas Balduino, bishop emeritus of Goias Velho in the state of Goias, recognized the Ministry of Justice's efforts to look out for the rights of indigenous peoples.

"The Policia Federal should be praised for their actions to remove from the indigenous reserve the rice growers who have the firm support of powerful politicians," said Bishop Balduino, adding that there is still, in general, "an alignment of government, or sectors of government, with agroindustry that goes against the interests of landless campesinos and indigenous."

In early May 2008, a document calling for contiguous demarcation was published and signed by leading civil-society organizations such as the Conferencia Nacional dos Bispos do Brasil (CNBB), la Sociedade Brasileira para o Progresso da Ciencia (SBPC), the Associacao Brasileira de Organizacoes Nao Governamentais (Abong), Instituto Socioambiental (ISA), Conselho Indigenista Missionario (CIMI), Greenpeace, the Movimento Sem Terra (MST), Movimento Nacional dos Direitos Humanos (MNDH), and the Coordenacao das Organizacoes Indigenas da Amazonia Brasileira (COIAB).

The document says, "The lands are the inalienable property of the state and now provide important environmental services for the country, including protecting the forests against advancing deforestation, which destroys the water sources, changes the rainfall system, and eliminates biological diversity." The document also questions conservative sectors' claim that approval of the reserve would create an enclave within Brazilian territory: "No movement ever appeared in indigenous lands that violated the integrity of national territory or acted as insurgents against the Brazilian state," the document says.

Decision has many conditions

STF deliberations regarding the more than 30 actions questioning the contiguous delimitation of the zone began in August 2008 but were suspended amid the case's great impact in Brazil and on international public opinion. The vote resumed in early March 2009 and ended with the historic decision on March 19. By a 10-1 vote, the STF upheld the approval of the contiguous demarcation

of Reserva Raposa/Serra do Sol and the subsequent immediate withdrawal of the rice growers and other non-Indians from that territory.

The STF established 19 conditions for the contiguous demarcation such as stipulating that the Indians' use of the land does not include use of water resources and electric power, investigation of natural resources, and gold mining or gathering without authorization from Congress and other agencies.

Another STF condition is that the Indians' use of the land does not supersede the interests of national defense policies, or bar installation of bases, units, outposts, and other military operations, expansion of the strategic highway network, functioning of strategic alternative energy, and protection of strategic riches at the discretion of the competent agencies (Ministry of Defense, Conselho Nacional de Defesa) and can be carried out without consultation with affected indigenous communities and FUNAI. In addition, the armed forces have unrestricted access for border defense.

The ruling guaranteeing the approval was written by STF Justice Carlos Ayres Britto, who set April 30, 2009, as the date by which non-Indians must withdraw from the area. "It is more than enough time, a second study with technical information, with a consultation with competent agencies," said the justice. Also undertaken in this period was the acceleration of compensation measures for non-Indians for improvements made in good faith through the years in the territory now definitively for the use of the indigenous peoples.

Thus, according to FUNAI, from 2002 to 2008, 267 non-Indians who inhabited the reserve had already been compensated for the improvements. In early April 2009, FUNAI and the Instituto de Terras de Roraima (Iteraima) had published that the 21 occupants had until April 17 to question the proceedings related to compensation and their relocation to an area outside the reserve. It seems, finally, that the long ordeal regarding the reserve Raposa/Serra do Sol is coming to its conclusion, with the guarantee of the rights of the indigenous peoples who have lived there for centuries, despite reservation by some groups to some of the STF conditions. But the March 19, 2009, decision has everything necessary to open a new chapter in the painful history of struggle for the immemorial rights of the indigenous peoples of Brazil.

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