

The Demarcation Case of Raposa Serra do Sol Indigenous Land in Brazil

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The Brazilian Supreme Court (“the Court”) is currently in the process of voting on a leading case concerning indigenous people’s issues in Brazil. By voting in favor of the demarcation of the *Raposa Serra do Sol* territory as a single and continuous area, the Court would allow marginalized groups de facto recognition of second-generation human rights. The decision of the Court would also be a remarkable contribution towards the establishment of affirmative action and public policies that mitigate the social exclusion of indigenous people.

Raposa Serra do Sol is the indigenous homeland of the Wapichana, Patamona, Tauperang, Macuxi and Ingaricó people. It is located in Roraima, a northeastern state in Brazil that borders Venezuela and Guyana. According to the Brazilian Supreme Court, an estimated 19,000 indigenous persons live in the area.¹ For far too long, there has been a serious land conflict between these indigenous tribes and rice farmers who live and grow crops in the same area.

Disputes over land involving indigenous people and farmers are not a new concern in Brazil. Throughout its history, the country has encountered many violent conflicts. To give one a better idea of the conflict’s extent, a rough estimate places the population of indigenous peoples in Brazil at five million before the Europeans first arrived in 1500 AD. Today, official government numbers place indigenous populations at about 300,000 people.² The decrease is a consequence of the acquisition by force of indigenous lands and livelihood practices. Many members of indigenous groups have also been the victims of torture, murder and slavery.

Even today, despite some progress over the years, many indigenous peoples live in poverty, starvation, marginalization and lack health assistance. As for the children, the problems are shameful. They grow up malnourished, have high levels of mortality, and lack access to even primary education in their mother tongue. Each of these alone constitutes a serious violation of basic human rights and dignity.

On April 15, 2005, the conflict in *Raposa Serra do Sol* intensified after President Luis Inácio Lula da Silva signed a decree that ratified the borders of *Raposa Serra do Sol* in the 4.2-million-acre reservation as being a single, continuous indigenous area.³ The decree was an attempt by the federal government to eschew a policy that didn’t uphold fundamental indigenous rights and put an end to the historic land dispute. The decree was also recognition that demarcation in continuous areas is fundamental and important to indigenous

culture and survival.

The decree mandated that the rice-growers leave the territory in exchange for monetary compensation from the Brazilian government. It also stated that the Roraima State no longer had rights over the land. Many of the rice-growers, however, questioned the demarcation of the land and did not leave the territory.

The rice growers, along with the Roraima State government, filed an injunction, arguing that President Lula’s decree was an affront to the Brazilian constitution, and a threat to national sovereignty and national defense policy. The petition also claimed that the demarcation of the land would obstruct economic development in the region. The petitioners proposed discontinuous demarcation (that is, demarcation separating the territory into many islands, without links between them).

By then, Brazil’s Supreme Court had temporarily suspended the removals, and on August 27, 2008, began to deliberate the matter of demarcation. One justice, Minister Ayres Britto, voted in favor of maintaining the area as a single, continuous, indigenous land. He pointed out that, from the legal point of view, “there are no arguments to justify the overturning of the demarcation process.” Minister Britto also argued that the economic interests of the farmers would not only continue, but even accelerate the deforestation and devastation of the Amazon.

Two other justices, Minister Lewandowski and Minister Menezes Direito, also put to rest the majority of the arguments claimed by the rice farmers and the Roraima State. They pointed out that when the Roraima State was established, indigenous people were already living in the area that is the object of the demarcation issue. They also questioned the feasibility of a discontinuous demarcation for indigenous persons who live share common values, culture and customs. In this sense, the creation of “many islands” would sunder the links between the tribes.⁴

This decision seems to mirror the will of the Declaration on the Rights of Indigenous Peoples, adopted by the United Nations during its sixty-second session, which provides that “indigenous peoples have the right to own, develop, control and use the lands and territories,”⁵ and have also the right “to the restitution of the lands, territories and resources which they have traditionally owned.”⁶

By moving in this direction, the Court also brings into play

Principle 22 of the Rio Declaration, recognizing the vital role that indigenous people play in environmental management, and the fundamental right to the restitution of their lands. In this sense, the Brazilian Court has opened a precedent of historic importance and has signaled a new orientation concerning indigenous human rights.

Despite being positive, the decision of the judges was just a first move, as the other ministers from the Brazilian Supreme Court are still expected to vote. This may take several months. Nonetheless, it is a move forward to implement standards, and to ensure compliance with the law.

All the Court judges are expected to vote in favor of the continuous demarcation. This moment is historic as it has been a long time since the Brazilian government has actively taken on the serious problems faced by indigenous tribes in its territory, and it is the first time that the government has sought to “take effective measures in guaranteeing ownership of indigenous territories” (from the Draft of the Inter-American Declaration of the Rights of Indigenous Peoples⁷).

Yet while this judgment is important, it might not constitute a “solution” to the indigenous issue in Brazil. The solution that would work best would be compliance with all U.N. and International Labour Organization conventions on indigenous peoples that Brazil has ratified, but that is still a long way off.

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1 Quarta-feira, *Raposa Serra do Sol: entenda o caso*, August 27, 2008, available at <http://www.stf.jus.br/portal/cms/verNoticiaDetalhe.asp?idConteudo=95026>.

2 Please visit: http://www.funai.gov.br/indios/fr_conteudo.htm.

3 Quarta-feira, *supra* note 1.

4 Quarta-feira, *Ministro Menezes Direito estabelece condições para índios viverem na Raposa Serra do Sol*, December 10, 2008, available at <http://www.stf.jus.br/portal/cms/verNoticiaDetalhe.asp?idConteudo=100568>.

5 Article 1, United Nations Declaration on the Rights of Indigenous Peoples, UNGA A/61/L.67 (7 September 2007), available at http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf.

6 *Id.* at Article 28.

7 Draft approved by the IACHR at the 1278 session held on September 18, 1995.