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JURISPRUDENCE AND LAND CONFLICT IN THE PROCESS OF DEMARICATION OF THE INDIGENOUS RESERVE RAPOSA SERRA DO SOL

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Abstract:

The Raposa Serra do Sol is an indigenous territory located in the extreme north of the Brazil, in the state of Roraima, specifically in the Normandia, Pacaraima and Uiramutã districts, between the Tacutu, Maú Surumu Miang and the Venezuelan and Guyana frontiers. The main objective of this article is to understand the complexity involved in the demarcation of the Raposa Serra do Sol Indian Reservation, considering the need to bring to the discussion the peculiarities of the Amazonian biome, the question of national sovereignty, which in this case was strongly contested by international agents working in the region, and the debate on indigenous law. These discussions have returned with force in the last months, seen diverse declarations on the unconstitutionality of the present demarcation.

Key Words:

Amazon, Brazil, Indigenous Lands, Land Conflict, Raposa Serra do Sol.



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INTRODUCTION

The Raposa Serra do Sol is an indigenous reserve located in the extreme north of the country, in the state of Roraima. It is a territory with approximately 1.7 million hectares of continuous area, and a population of about 20 thousand Indians, whose territorial dispute has been occurring since the 1970's, when the process of identification and demarcation began of that space. In 2005, these lands were homologated by then-President Luís Inácio Lula da Silva, and in 2009 the Federal Supreme Court decided to exclude non-Indians from the region (LIMA, 2018). It is more than 32 years of land struggle, a process that has historically been marked by threats, destruction, violence and death, acts deprived of justice (CIMI, 2018).

Brazil has several areas with land conflicts, due to the demarcation of land in favor of native indigenous rights. This research will carry out a specific case study about the Raposa Serra do Sol reserve. That's because this case had great international repercussions, bringing debates about native rights, ownership, property, economic development, traditional peoples and national security. The richness of the discussion surrounding the Raposa Serra do Sol is the main justification for its choice, given the possibility of instigating a deep analysis of the chosen theme. In this study, it will be possible to understand different levels of conflict between the Union and the State, large and small farmers, Indians and non-Indians in the struggle for land tenure, and so on. In addition, the complexity of this case study can also be understood by the participation of part of the foreign community, represented by nongovernmental organizations, which seek to maintain international control over the great Amazon forest in relation to its natural wealth.

Therefore, the main objective of this article is to understand the complexity involved in the demarcation of the Raposa Serra do Sol Indian Reservation, considering the need to bring to the discussion the peculiarities of the Amazonian biome, the question of national sovereignty, which in this case was strongly contested by international agents working in the region, and the debate on indigenous law. These discussions have returned with force in the last months, seen diverse declarations on the unconstitutionality of the present demarcation.

As a result, the question that will give meaning to this article is: is the demarcation of the lands of the Indian reserve Raposa do Sol, carried out by the STF, legally secured? It is hypothesized that the demarcation of the lands of the Raposa Serra do Sol Indian reservation, despite being legally assured, has



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been challenged by farmers in the region, political authorities, companies, national and foreign, nongovernmental organizations, and even of the population in general. Such disputes cause the decision of the STF to weaken and risk being revoked, which becomes a matter of concern, since the suspension of the decision taken in 2005 may have negative consequences for the legitimacy of the institutions and the Brazilian regulatory framework, as well as for the survival of the traditional peoples of the region.

The search for answers to this question will lead to a path divided into five sections, in addition to this introduction: 1. The history of the Raposa Serra do Sol indigenous reserve; 2. Amazon, and its specificities; 3. Indigenous Rights in Brazil; 4. Dispute against the decision of the STF, and 5 - current debate on the subject, as final considerations. The suggested sections are fundamental to understand the complexity of the land conflict that historically was present in the Raposa Serra do Sol Indian reservation.

1. The Raposa Serra do Sol indigenous reserve: contextualization

The Raposa Serra do Sol is an indigenous territory located in the extreme north of the country, in the state of Roraima, specifically in the Normandia, Pacaraima and Uiramutã districts, between the Tacutu, Maú Surumu Miang and the Venezuelan and Guyana frontiers. The Raposa Serra do Sol is composed of the Makuxi, Uapixana, Ingaricó, Taurepangue, and Patamona peoples, with the beauty and the peculiarity of the Amazonian biome from the joint of mountains, tropical forests, savannas, rivers and waterfalls (CIMI, 2018).

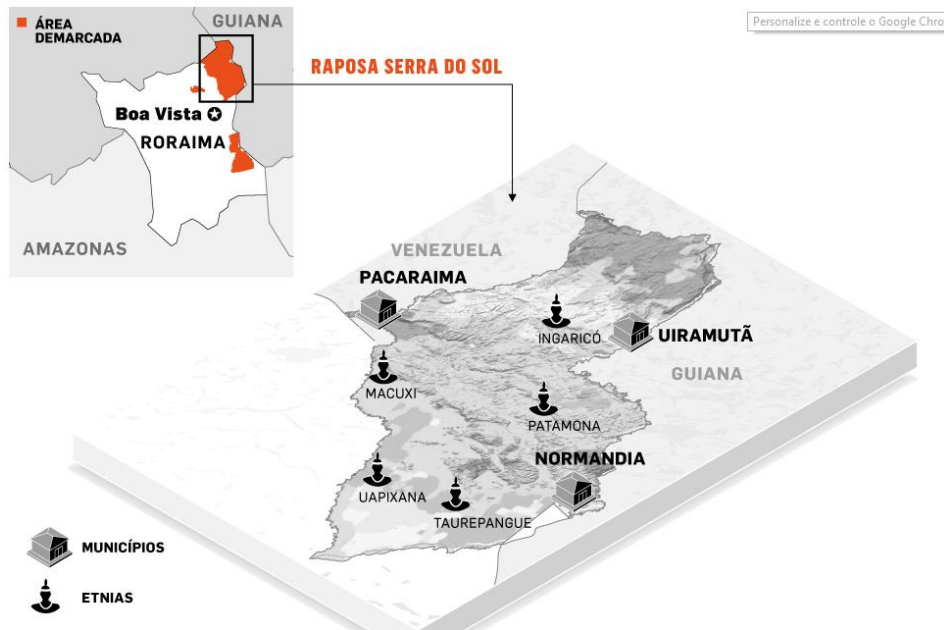


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Figure 1 - Raposa Serra do Sol Location



Source: LIMA, 2018

Although Raposa Serra do Sol is not the largest indigenous reserve in the country, which belongs to the Xingu Indigenous Park, it can be observed in Figure 1 that it has a geostrategic position, since it borders two countries, Venezuela and Guyana, and being part of an extremely rich biome of Brazil. It is important to point out that the state of Roraima has more than two thirds of land occupied by areas of environmental protection and indigenous reserves, which in turn intends the debate between environmentalists and proponents of pro-capitalist economic development.

1.1. The past

In order to understand the process that led to the demarcation of the Raposa Serra do Sol Indian lands, it is important to return to the 1960s, when the indigenous peoples of that region began to have contact with missionaries (ARAÚJO, 2006; 2009), who projected in Roraima similar to those that were



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happening in Kenya and with its decolonization, that is to say, the expropriation of the natives of their lands, and consequently the submission of their work force to the white people. In an attempt to reverse this process, the missionaries created a cooperative whose purpose was to promote barter with the Indians, since the exchange between them and the farmers was always disadvantageous for the former, considering that the prices of the produce of the farms were higher, which in turn led to increasing indebtedness of the indigenous population to farmers. The problem was that not all the missionaries were in agreement with this vision, some of them in favor of the lifestyle that both groups took previously, and from these different positions, the region went through a long period of debate among the missionaries. In 1977, the Catholic Church in Roraima, through bishop Dom Aldo Mongiano, chose in favor of the natives, which in turn led to changes in the work of the missionaries in that region of the extreme north of the country (ARAÚJO, ALMEIDA, 2013). In the words of Araújo and Almeida (2013):

Officially taken by the Diocese of Roraima in 1977, after the Federal Police and FUNAI closed the annual meeting of tuxauas (chiefs) in the Surumu mission, the "option for the indigenous cause" resulted in a readjustment of the indigenous pastoralist. According to Archbishop Aldo Mongiano (1990, p. 166), it had to be readjusted "so that it would reach out to the indigenous people and make them a brave Christian capable of facing the oppressing society." As a result of this new perception, five pastoral criteria were established to guide missionary practice (CNBB, 1993): "1) From the 'malocas' [indigenous villages] and not from the 'farms'; 2) 'Listen' to the Indians and not soon 'speak' to them; 3) 'Indian' and not 'caboclo'; 4) Work first for the maloca, then for the farmer; 5) Do not face white people alone.

As a consequence of these transformations, the missionaries sought to give greater international visibility to the case of expropriation of indigenous lands that had been taking place in that region, especially in eastern Roraima. In addition to the support of missionaries from other countries, such as Italy, the project was able to provide sufficient support to buy a small farm with conditions to develop livestock, as well as the outline of what became the Training Program for Indigenous Health Agents (AIS), which later received the support of Doctors Without Borders (ARAÚJO; ALMEIDA, 2013). According to the testimony of Sister Augusta:



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Doctors Without Borders have passed (here), making a visit (...). At that time, we went to visit community by community. They, then, saw the farm that I had already done, that is, the land already ready. They endorsed and started taking the courses. They came to teach. So we did a course by region, and there began the training courses. All this same people that I had, we got some newbies and started giving the courses (...) not only in my region, but in other regions. (...) They took a little (of novices) in each region and they did a great course, it was in Surumu, of more than 20 days. In each region there was a refresher course for those who were already working. It is what we are holding (Sister Augusta) (ARAÚJO; ALMEIDA, 2013).

As a consequence of this sequence of initiatives, the Special Indigenous Sanitary Districts (DSEI) was created, a subsystem of the Unified Health System (SUS), aimed at caring especially for indigenous peoples. Paulo Daniel, the first medical coordinator of the Eastern District of Roraima (DSL), describes this process:

I came across the Diocese to help structure the health system already in line with the training of Indigenous Health Districts. I had been participating in this discussion at the Conference of [19]93 through Cimi, and we saw that here in Roraima it was where there was already a somewhat more mature process, already a few years' work with the formation of indigenous agents of health, but in a still very disintegrated way. (...) It was the Doctors Without Borders project, which (...), was totally open to this idea of structuring a program in the manner of the Sanitary District, the local health system. So it was basically a partnership between the Diocese, the staff that the Diocese had - a good number of Sisters working in the health area, and I was in the coordination of this health sector of the Diocese - Doctors Without Borders, and Funai people, of the National Health Foundation itself, of Sesau, eventually of the Evangelical Mission, people that we managed to involve. We were able to aggregate a group of institutions. Indigenous organizations, from the outset, were already heavily involved. Then began to structure [the Sanitary District with] the programs that until now have been developing. They have all been implemented since [19] 95 (...), all the main lines of what is now this Sanitary District, and that served, in a certain way, as a pilot for this proposal of restructuring Brazil (ARAÚJO; ALMEIDA, 2013).

In the 1980s, the efforts of the projects in the state of Roraima, which, as we have seen for some time, focused on the conquest of land and the provision of health services, received a new direction - "the recovery of the indigenous culture". Part of this search for the valorization of the traditional way of life came by the emergence of indigenous leaderships within the cycle composed of cowboys, missionaries,



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indigenous teachers, and so on. The search for greater knowledge of the traditional culture of indigenous peoples began with the Macuxi, from which it was sought to raise what had already been written. The results of the first studies came in two books written by teachers of the Maturuca Indigenous School, Sobral André, Abel Tobias and Inácio Brito:

We Makuxi indigenous teachers, after a long walk in Education teaching the white culture imposed by the government, we conclude that all this is a DESINDIANIZATION and consequently the MARGINALIZATION of the indigenous peoples. While we know that education begins in the family, and the education of the Indians is seen by the whites with contempt, but in fact it is equal to any existing education. We have our TRADITIONS: myths, medicine, stories, crafts and many other things. In the first place the LANGUAGE, all this we gather from our old wise Indians and, with pride, we teach our young Indians, not only in theory but in practice, where we have the example of the MIRIKIO MAKUXI Indigenous School in the Maturuca time started to work. We found support from the Tuxauas, the Indigenous Council of the Regions, the Indigenous Territorial Council (Cinter) 10 and the indigenous communities. We preserve our CULTURE because we are a people capable of perfecting everything we have learned and seen in nature. Thanks to the Most High who gave intelligence, wisdom to all peoples that exist. With your help we wish that in our day to day we reach the conclusion of the future of the PEOPLE MAKUXI, that is a strong, brave and organized people.

In this way, the missionaries, in seeking to reverse the inferiority of indigenous peoples to the whites, especially in the face of local farmers, promoted the appreciation of traditional culture and encouraged them to be leaders in their own history. As a result of this rich process, the question of land demarcation in the northeastern region of the state of Roraima came to have a new element: the fact that indigenous peoples could only survive if they had their land demarcated. In other words, land and culture came to be seen together as a condition of existence, and this argument has gained strength over the years. In this process, too, the idea that in order to ensure a "social justice", it was important to create communities formed by individuals of the same values, who should work together and make their decisions in a group, something that also requires the demarcation of lands to be realized.



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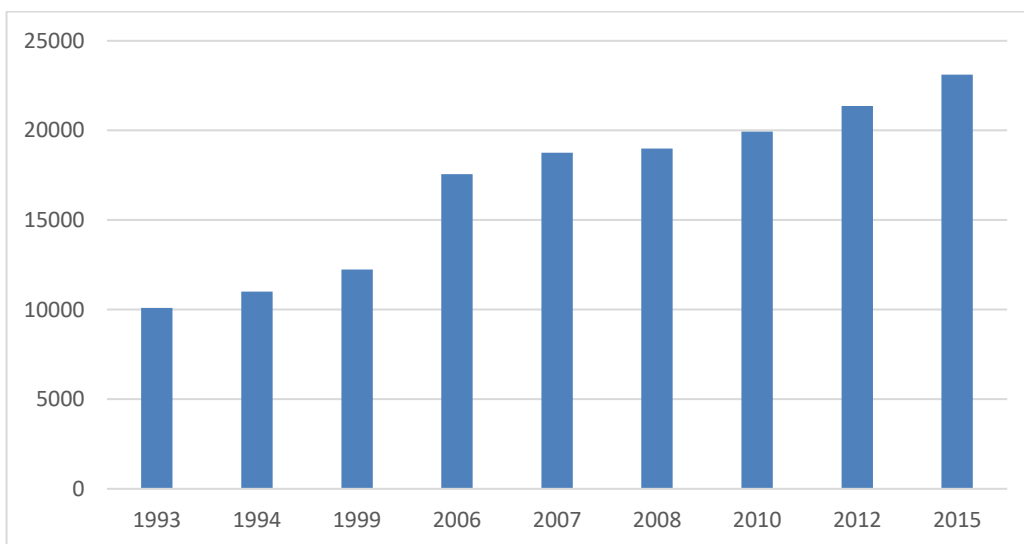
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1.2 The Present

The indigenous population located in the Raposa Serra do Sol reserve has had significant growth between 1993 and 2015, increasing from approximately 10,000 people to 23,119, that is, the traditional peoples of this region more than doubled. It is important to note that although between 1999 and 2006 we do not have the data of each year, it was in this interval of time that there was the greatest population growth, going from 12,242 Indians to 17,559. It is worth mentioning that it was during this period that the land was officially approved in 2005, when 100% of these lands were identified, declared, demarcated and homologated. It is believed that this fact had an important weight in the population growth of the Indians who live in the Raposa Serra do Sol reserve.

Graph 1: Population Indigenous Land Raposa Serra do Sol



Source: Instituto Socioambiental (ISA), 2018.

As mentioned previously, the region of this study contemplates three cities in the state of Roraima: Normandia, Pacaraima and Uiramutã, which cover an area of 696,681.10 ha, 802,848.30 ha and 806,556.40 ha respectively. As can be seen in Graph 1, the Raposa Serra Sol indigenous lands have great weight within



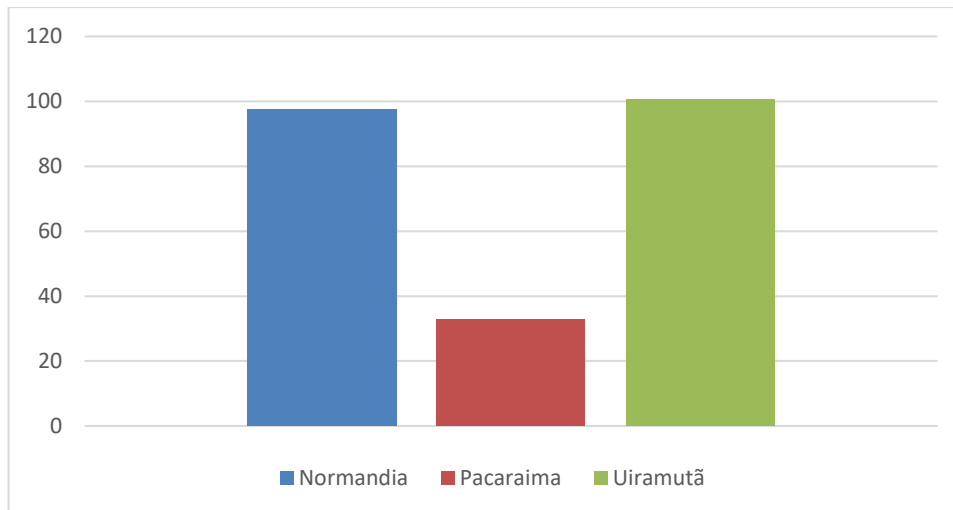
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these cities, since in Normandia such lands correspond to 97.40% of the total area, in Pacaraima 32.91% and in Uiramutã 100.54 %.

Graph 2: Raposa Serra do Sol Indian Land in the total area



Source: Instituto Socioambiental (ISA), 2018.

Another important data to understand the object of study of this article is the total deforested area of indigenous land per year, as shown in Graph 3. Despite the oscillation of the total deforested area per year, having peaks in 2004, 2006 and 2010 (643 ha, 1,161 ha and 1,623 ha, respectively), there was a significant increase in deforestation after the homologation of the reserve in 2005. This is because, to date, the average of the total deforested land was 200 ha, after 2005, the average was approximately 300 ha, which in turn shows a growth of about one third of the total deforested area.

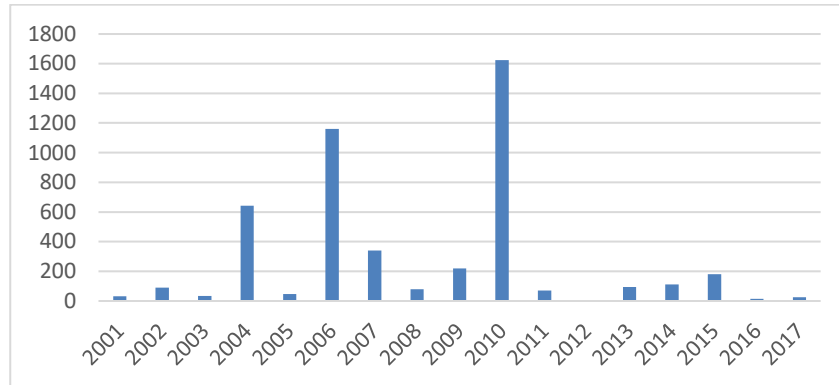


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Graph 3: Total Deforested Area of Indigenous Land per year



Source: Instituto Nacional de Pesquisas Espaciais (INPE), 2017

It is important to emphasize that the growth of the average deforested area after 2005 is an argument against the decision of the Federal Supreme Court, which decided in favor of the demarcation and homologation of the reserve, and consequent expulsion of the farmers from the 1,700 hectares that today corresponds to the Raposa Serra do Sol Indian reserve. The conquest gained after years of struggle is losing strength, since President-elect Jair Bolsonaro already questions the STF's position, stating that the reserve lands should be rationally exploited, completely disregarding the traditional relationship of the Indian with the lands, and consequently with their natural resources.

2. Amazonia and sovereignty, a debate historically in question

The Raposa Serra do Sol indigenous land benefits come from the Amazonian biodiversity, as well as the incalculable wealth of this biome, factors that allow us to understand why this region attracts so much international greed. These aspects provide the Amazon in general and the Raposa Serra do Sol reserve, in particular, an economic, geopolitical and scientific potential, which enables national and regional development. It is important to note that the beginning of the 21st century left behind the old view that this biome was untouchable and came to see it as an opportunity for socioeconomic and environmental



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development, that is, the Amazon gained a new geostrategic position in the national and international scenario (BARBOSA, 2015).

It can be said that this new approach is the result of a new perception regarding the Amazonian natural resources. Previously, it was believed that these resources were inexhaustible, and there was no reason to worry about preservation and sustainable development for the Amazon. However, in the face of a shortage of such resources, especially in the central countries, which have already used much of their strategic resources for the development of their industries. Regions that still have natural and mineral riches are now receiving more attention from all parts of the world, in particular from the great powers, who need these resources to continue supplying their industries (PASSOS, 2010).

Whether through transnational companies or non-governmental organizations (NGOs), it is possible to perceive the consolidation of interests of non-Amazonian countries in the Brazilian Hiléia, since the entry of new actors in this biome is done by the representation of another State. It is necessary to emphasize that both companies and NGOs justify their participation in the Amazon, claiming to be concerned with environmental preservation and with the socioeconomic development of this "world patrimony" (PASSOS, 2010).

With regard to the high participation of international agents in the Amazon biome, it is important to remember that the activities of the NGOs have been a controversial topic involving the Raposa Serra do Sol indigenous lands, since there are different positions in relation to the demarcation process of the reserve area. Such organizations have different structures, since they are private entities whose purpose, in discourse, would be to promote the well-being of the population. The Indigenous Movement in Roraima, for example, defends that the conflicts for land, and other indigenous rights, must be done by the Indian himself (VIEIRA, 2008). Table 1 below summarizes what these organizations are, which will then be more carefully presented.



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Table 1 – Organizações Indígenas em Raposa Serra do Sol

| Nome | SIGLA |
|--|----------|
| Aliança para a Integração e Desenvolvimento das Comunidades Indígenas de Roraima | ALIDCIRR |
| Associação Agropecuária da Região Central Água Fria | AARCAF |
| Associação dos Povos Indígenas de Roraima | APIRR |
| Associação Regional Indígena do Rio Kinô, Cotingo e Monte Roraima | ARIKON |
| Centro de Etnodesenvolvimento Indígena Kaipêta/ Contão | CEIKAC |
| Centro Indígena de Formação e Cultura Raposa Serra do Sol | CIFCRSS |
| Conselho do Povo Indígena Ingarikó | COPING |
| Conselho Indígena de Roraima | CIR |
| Organização das Mulheres Indígenas de Roraima | OMIR |
| Organização dos Povos Indígenas de Roraima | OPIR |
| Organização dos Professores Indígenas de Roraima | OPIRR |
| Sociedade de Defesa dos Índios Unidos de Roraima | SODIUR |

Source: Terras Indígenas.org, 2018

Among the twelve organizations mentioned above, five of them positioned themselves in favor of the continuous demarcation of the indigenous land Raposa Serra do Sol: 1. The Ingaricó Indigenous People's Council (COPING), linked to artisanal work in the region, and encouraging self-determination of indigenous peoples of the reserve, highlighting the Ingaricó ¹people; 2. The Association of the Indigenous Peoples of Roraima - APIRR -, which affirm that the impact after the demarcation and homologation of the continuous area was the unemployment of the natives who worked in the plantations of rice, causing a strong dilemma among those who were already inserted in the civilization of the "white" man, and the

¹ The Ingaricó already have contact with whites, but this contact is very restricted. occurs only when they come to receive the benefit that the Federal Government gives them. Therefore, the impacts after homologation were almost zero. They were not affected by the withdrawal of non-Indians. While other ethnic groups like the Wapichana, and the Macuxi, who were already more influenced by the culture of non-Indians, employed and with a more diversified culture; they felt affected after the withdrawal, primarily because they lost their jobs on farms and rice fields, among other factors.



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bonds of patronage historically created with them²; 3 - Organization of Indigenous Women of Roraima - OMIR - whose birth came from the need for representation on the part of the indigenous women of diverse peoples, such as Macuxi, Ingaricó, Sanuma, Wai Wai, Wapichana, Pantanoma, Yerepang, Yekuana and Yanomami³; 4. The Organization of Indigenous Peoples of Roraima (OPIR), an organization dedicated to promoting the defense of education especially for indigenous peoples, having as its area of action the regions of Amajarí, Alto Parima, Baixo Cotingo, Jatapuzinho, Yanomami, Raposa, Serra da Lua, Serras, Surumu, San Marcos and Taiano; and 5 - the Indigenous Council of Roraima - CIR - also linked to the defense of the cultural, social and economic autonomy of indigenous peoples, having as its place of action areas such as Contigo, Surumu, Taiano, Serra da Lua, Raposa, Amajarí, São Marcos , Wai Wai and Yanomami.

It is also important to point out the organizations that were against the disinformation: 1. the Society of Defense of the United Indians of Roraima - SODIUR -, which seeks to defend the development of the indigenous population through fish farming, agriculture and livestock, and so on, something that such an organization became more difficult after the departure of non-Indians, since there is no employment, health, or even education today; 2. and the Alliance for the Integration and Development of the Indigenous Communities of Roraima - ALIDCIRR -, whose emergence came from the discontent of some indigenous groups in relation to the CIR. These two organizations favored the demarcation of the Raposa Serra do Sol indigenous land in islands, since the CIR did not treat the unincorporated Indians in the same way as the affiliates. In addition, contrary NGOs also affirmed that FUNAI is in favor of the CIR, which weakens the other organizations, since political issues are ahead of the needs of traditional peoples.

² What can be counted as positive is the fact that they have greatly improved the Indians access to their own land. Rather they were prevented from fishing in the ranch areas, nor could they hunt in some places. They lived within limits and were not totally free. With continuous approval they now have free access to places they did not have before. Another factor cited is the presence of the Indians ahead of organs pro-Indians, for example, FUNAI. It is believed that with this attitude indigenous interests would be better served.

³ For this Organization, the cultural impacts were not relevant and economically there were only improvements, as reported by the coordinator. The coordinator says that the only downside was that women would like to have received a place for the coordination and implementation of their projects, which has not yet occurred, but reveals that it has not brought big losses.



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Figure 2 – Summary of Non-Governmental Organizations

| ORGANIZATION | CHANGED STRATEGY AFTER DISINTRUSION | CHANGES |
|--------------|-------------------------------------|---|
| COPING | YES | Before the homologation and withdrawal of non-Indians, this organization worked in partnership with the CIR, discussing projects that would be used when homologation occurred and the non-Indians were removed. Since the withdrawal of non-Indians, the coordinators are seeking to implement the projects already made and discussed previously, in addition to emphasizing the sustainability of the Raposa Serra do Sol Indigenous Land, the awareness of the Indians and the preservation of the land. |
| APIRR | NO | The APIRR did not change its strategies and still has not adapted to the new reality, according to the coordination APIRR still needs to update |
| OMIR | NO | According to the OMIR coordinator, the work strategies were not changed. The only difference is that there is now greater facility for the implementation of projects, greater freedom within the Indigenous land and greater access |
| OPIR | NO | According to the coordination of this Organization there were no changes in |
| CIRR | YES | According to the coordinator of this Organization there have been changes in strategies and the CIR is adapting to the new reality. The coordinator acknowledges that are much remains to be done. Before homologation, the CIR was basically fighting for the approval of Terra Indígena, after homologation and invaders removal, the coordinator said that they are looking for partnerships with the Federal Government and with foreign NGOs to implement projects that develop communities and offer a better quality of life |
| SODIURR | NO | According to the coordinator of this Organization, nothing has changed. Currently SODIURR coordination seeks partnerships with the state government and feels greatly impaired by the demarcation in continuous area |

Source: Silva, Braga, 2011.



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Thus, it is noted that the Amazon has been the scene of a clash of interests between indigenous populations, NGOs and non-indigenous groups, and it is precisely this conflict of interests, aggravated by the actions of new actors in the region, which characterizes this internationalization of the biome. We live in a moment in which there has been an expansion of the actors of society, today society is not discussed only at the state level, but also through organized social agents, corporations, religious organizations, among others (BECKER, 2005). In this way, a more complex configuration of society is observed, since several actors gain the strength to defend their interests. The case of the Raposa Serra do Sol indigenous land explains this new scenario, demonstrating conflicts of interests that go beyond traditional indigenous peoples, large and small farmers and state institutions, and also include foreign agents whose interests also conflict with each other.

3. Social and environmental context and the past struggle of indigenous leaders

The process of organizing indigenous peoples gained strength during the 1960s and 1970s, supported by FUNAI (governmental agency for indigenous peoples), CIMI (a Catholic church focused on protecting indigenous peoples in Brazil) and NGOs. CIMI was instrumental in articulating many indigenous groups during this period, especially during the 15 Assemblies of Indigenous Chiefs that took place in the 1970s and 1980s. This paved the way for the inclusion and strengthening of indigenous rights in the drafting of the Constitution - Although not without an intense political conflict of indigenous peoples, their leaders and organizations for indigenous rights (Evangelista, 2004). Another agent who played an important role was the UNI (Union of Indigenous Nations). It was an organization created to represent the diverse ethnic groups and had as president and vice president Ailton Krenak and Álvaro Tukano, respectively. Both participated actively in the elaboration of the Constitution. These facts paved the way for the participation of indigenous peoples in the elaboration of the Constitution for the first time in the country's history (Lopes, 2014).

3.1. Constitution of 1988 as a landmark for the indigenous population

The main international legislation protecting indigenous rights is Convention n° 169 of the International Labor Organization (ILO) of September 1991 on indigenous and tribal peoples, and can be considered as an instrument for the social inclusion of traditional populations. The present legislation



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ratified in Brazil only in 2002 through Legislative Decree 143, and promulgated by Presidential Decree 5,051, dated April 19, 2004, which can only be revised with the approval of the National Congress.

The document recognizes the rights of indigenous peoples to take control of their own institutions, ways of life, as well as their economic development, maintaining and strengthening their identities, languages and religions within the states where they live. It is understood that the protection of the rights and culture of indigenous peoples contributes to cultural diversity, social and ecological harmony of humanity (ILO Convention n° 169, 1991). In summary, this is an international norm of Human Rights, a subsidy for the recognition of tribal and indigenous peoples, with the main purpose being the self-determination of these communities due to their ethnic identity, culture and customs, as well as their history and the condition with which they relate to the territories in which they live. Articles 13 and 19 of this Convention give force to this group, as can be seen below:

Art. 13

1. In applying the provisions of this part of the Convention, governments shall respect the special importance which the peoples and peoples' spiritual cultures and values have in relation to their lands or territories, or both, where appropriate, which they occupy or use some way, and particularly the collective aspects of this relationship.

2. The use of the term "land" in Articles 15 and 16 should include the concept of territories, which covers the entire habitat of the regions, which the peoples concerned occupy or otherwise use.

Art. 19

National agrarian programs shall secure to the peoples concerned treatment equivalent to that accorded to other sectors of the population, for the purpose of:

a) the allocation of land to these peoples when their lands are insufficient to guarantee them the elements of a normal existence or to face their possible numerical growth;

b) the necessary resources for the development of the lands that these peoples already possess (BRASIL, 2004).

The Brazilian Constitution of 1988, which implemented the process of democratization begun in 1985, consolidated these rights by establishing cultural diversity as a Brazilian constitutional value,



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characterizing it as a multiethnic country. This is explicit in article 215 and 216 of the Constitution. This is because, while the former imposes on the State the duty to "guarantee to all the full exercise of cultural rights and access to the sources of national culture, and will support and encourage the appreciation and diffusion of cultural manifestations" (BRAZIL, 1988). Article 216 consecrates that: "Matter of material and immaterial nature, individually or jointly, bearers of reference to identity, action, and memory of the different formative groups of Brazilian society constitute a Brazilian cultural heritage" (BRAZIL, 1988). For more details on these articles:

Art. 215. The State shall guarantee to all the full exercise of cultural rights and access to the sources of national culture, and shall support and encourage the promotion and dissemination of cultural expressions.

§ 1º The State will protect the manifestations of popular, indigenous and Afro-Brazilian cultures, and those of other groups participating in the national civilizational process.

§ 2º The law will provide for the establishment of commemorative dates of high significance for the different national ethnic segments.

§ 3º The law will establish the National Plan of Culture, of multi-year duration, aiming the cultural development of the Country and the integration of the actions of the public power that lead to the:

- I - defense and valorization of the Brazilian cultural heritage;
- II - production, promotion and dissemination of culture;
- III - training of qualified personnel for the management of culture in its multiple dimensions;
- IV - democratization of access of culture;
- V - valuing ethnic and regional diversity.

Art. 216. Brazilian cultural heritage includes assets of a material and immaterial nature, taken individually or together, bearers of reference to identity, action, and memory of the different formative groups of Brazilian society, which include:

- I - the forms of expression;
- II - the ways of creating, doing and living;
- III - scientific, artistic and technological creations;
- IV - works, objects, documents, buildings and other spaces intended for artistic and cultural events;
- V - urban complexes and sites of historical, landscape, artistic, archaeological, paleontological, ecological and scientific value.

§ 1º The public power, with the collaboration of the community, shall promote and protect Brazilian cultural heritage through inventories, records, surveillance, registration and expropriation, and other forms of precaution and preservation.

§ 2º The public administration, in accordance with the law, is responsible for the management of governmental documentation and the arrangements to cross its consultation to those who need it.

§ 3º The law shall establish incentives for the production and knowledge of cultural assets and values.

§ 4º Damages and threats to cultural heritage will be punished, according to the law.



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§ 5º All documents and sites reminiscent of historical remnants of the former quilombos are registered.

§ 6º The states and the Federal District may allocate the state fund for promotion of culture to five percent of their net tax revenue for the financing of cultural programs and projects, prohibited the use of these funds to pay:

I - expenses with personnel and social charges;;

II - debt service;

III - any other current expense not directly linked to the investments or actions supported (BRASIL, 1988).

Belfrot (2006, 29) writes about the paradigm shift that occurred in the Constitution of 88:

However, the paradigm shift embodied in the 1988 Constitution, when it definitively points out all issues related to indigenous societies in the public sphere: the framework and protection of traditional lands, the education they possibility of judging in defense of their rights, aiming at the solution of conflicts, ensuring the intervention of the Federal Public Ministry in their defense in all acts of the process.

It is possible to note a change in the relationship between the State and traditional indigenous populations since the 1988 Constitution. This is because, before this, it was guided by extermination and integration into white capitalist society, after which the original rights of these peoples were clearly recognized and their extended guarantees. Thus, the constitution differs from the previous two when it does not consider the indigenous population to be extinct, but as a population that has original rights, it refers to rights that already existed prior to the creation of the Brazilian State (BELFORT, 2006).

Article 231 of the Federal Constitution and its paragraphs bring changes and paradigm shifts through the recognition and equality of rights of indigenous peoples with respect to their social organization, customs, languages, beliefs and traditions. It assures the original right in the lands that they occupy like preexisting right, independent of legitimation. As indigenous lands, they are property of the Union, which must demarcate, protect and make society respect all its assets (FERNANDES, REYDON, PASSOS, BUENO, 2017).

“Art. 231. Indigenous peoples are recognized for their social organization, customs, languages, beliefs and traditions, and their original rights over lands they traditionally occupy, and it is for the Union to demarcate, protect and enforce all its property. [...]

§ 1º - The lands traditionally occupied by Indians are those inhabited by them on a permanent basis, those used for their productive activities, those indispensable for the preservation of the environmental resources necessary for their well-being and those



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necessary for their physical and cultural reproduction, according to their uses, costumes and traditions.

§ 2º - The lands traditionally occupied by the Indians are destined for their permanent possession, being the exclusive usufruct of the riches of the soil, the rivers and the lakes in them. [...]

§ 4º - The lands referred to in this article are inalienable and unavailable, and the rights over them, imprescriptible. [...] "(BRASIL, 2006, p.60).

“§ 5º - It is forbidden to remove indigenous groups from their lands, unless, “ad referendum” of the National Congress, in case of a catastrophe or epidemic that endangers their population, or in the interests of the country's sovereignty, after deliberation of the National Congress, in any event, the immediate return as soon as the risk ceases.

§ 6º - The acts that have as their object the occupation, domination and possession of the lands referred to in this article, or exploitation of the natural riches of the soil, the rivers and the lakes in them, are null and void and have no legal effects, subject to the provision of a complementary law, and nullity and extinction shall not cause the right to compensation or to actions against the Union, save, in the form of the law, in relation to the improvements derived from the occupation in good faith (BRASIL, 2006, p. 60).

The permanent possession of traditionally occupied lands, as well as the exclusive enjoyment of resources of the land, the rivers and the existing lakes, is assured in §2 of art. 231. Therefore, the exclusive enjoyment of the exploitation of water resources, enclaved with energy potentials, research and cultivation of mineral wealth in indigenous lands can only be carried out with the authorization of the National Congress, after hearing the affected communities results of cultivation, in the form of the law (§3 of article 231).

In order to guarantee the original rights, the permanent possession and enjoyment of natural resources, § 6º, provides that acts aimed at the occupation, ownership and possession of lands to which this property is related shall be null and void and have no legal effect, or the exploitation of the natural wealth of the soil, rivers and lakes existing, except for the excellent public interest of the Union, according to which to make use of complementary law, not generating nullity and extinguishing right to compensation or action against the Union, except in the form of the law, as well as improvements derived from the occupation in good faith (FERNANDES, REYDON, PASSOS, BUENO, 2017).

It should be noted from this section, how ILO Convention 169 and the Federal Constitution of 1988 were important milestones for the subject that surrounds the object of this research. From this, the Indians became subjects of law, so that have their customs and traditions respected by law.



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3.2. The impacts of the evolution of the legal framework

As the 1988 Constitution defined that indigenous lands traditionally occupied should be transformed into land owned by the State for the permanent use of the indigenous people, this part of the document will show how this happened. Decree n°. 1,775, of January 8, 1996, which complemented the Constitution, defined that the National Foundation of the Indian (FUNAI) would be the institution responsible for the demarcation process. This legislation defines that the demarcation process involves five phases until the indigenous land is duly registered in the real estate registry.

According to FUNAI, the phases are:

- Under study: Accomplishment of anthropological, historical, agrarian, cartographic and environmental studies, which support the identification and delimitation of indigenous land;
- Delimited: Lands that had the studies approved by the Funai Presidency, with its conclusion published in the Official Gazette of the Union and of the State, and which are in the phase of administrative contradiction or under analysis for the Ministry of Justice, for decision on the Expedition Declared Declaratory Transport of the traditional Aboriginal;
- Demarcation: lands that have obtained the issuance of Declaratory Orders to the Minister of Justice and are authorized to be demarcated physically, with the materialization of landmarks and georeferenced;
- Homologated: Lands that have their limits materialized and georeferenced, whose administrative framework was approved by presidential decree;
- Regulated: Land that, the decree of homologation had later been registered in notaries in the name of the Union and the Secretariat of the Patrimony of the Union;
- Restricted: Restricted areas of use and entry of third parties for the protection of isolated Aboriginal peoples.

The improvement of the situation of the indigenous population with the guarantees of their lands that took place after the promulgation of the Constitution of 1988 was a considerable increase in the volume of demarcated areas, homologation and regularization of indigenous lands with measure of protection to these peoples. Based on data from the National Indian Foundation - FUNAI prior to the 1988 Constitution,



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in Brazil there were about 70 indigenous areas occupying 4,610,764.72 hectares (FUNAI, 2017). As can be seen in table 2, there are now 566 indigenous areas, totaling 117,057,916.59 ha. Of these, 436 are regularized, 13 homologated, 73 declared and 44 demarcated. FUNAI is still with 115 in the study phase and 6 are in the interdiction phase, that is, 1,084,740 ha, that is, these areas are those with restricted use and entry of third parties to protect isolated native populations.

Table 2. Indigenous lands obtained, regularized and in process after the 1988 Constitution, Brazil, 2019

| Process Stage | Quantity | Surface (ha) |
|--------------------|------------|-----------------------|
| Demarcate | 44 | 2.243.541,97 |
| Declared | 73 | 7.602.655,21 |
| Homologated | 13 | 1.497.048,96 |
| Regularized | 436 | 105.714.670,45 |
| Total | 566 | 117.057.916,59 |
| | | |
| In Study | 115 | 0 |
| Interdiction Order | 6 | 1.080.740,00 |

Source: Funai, 2019

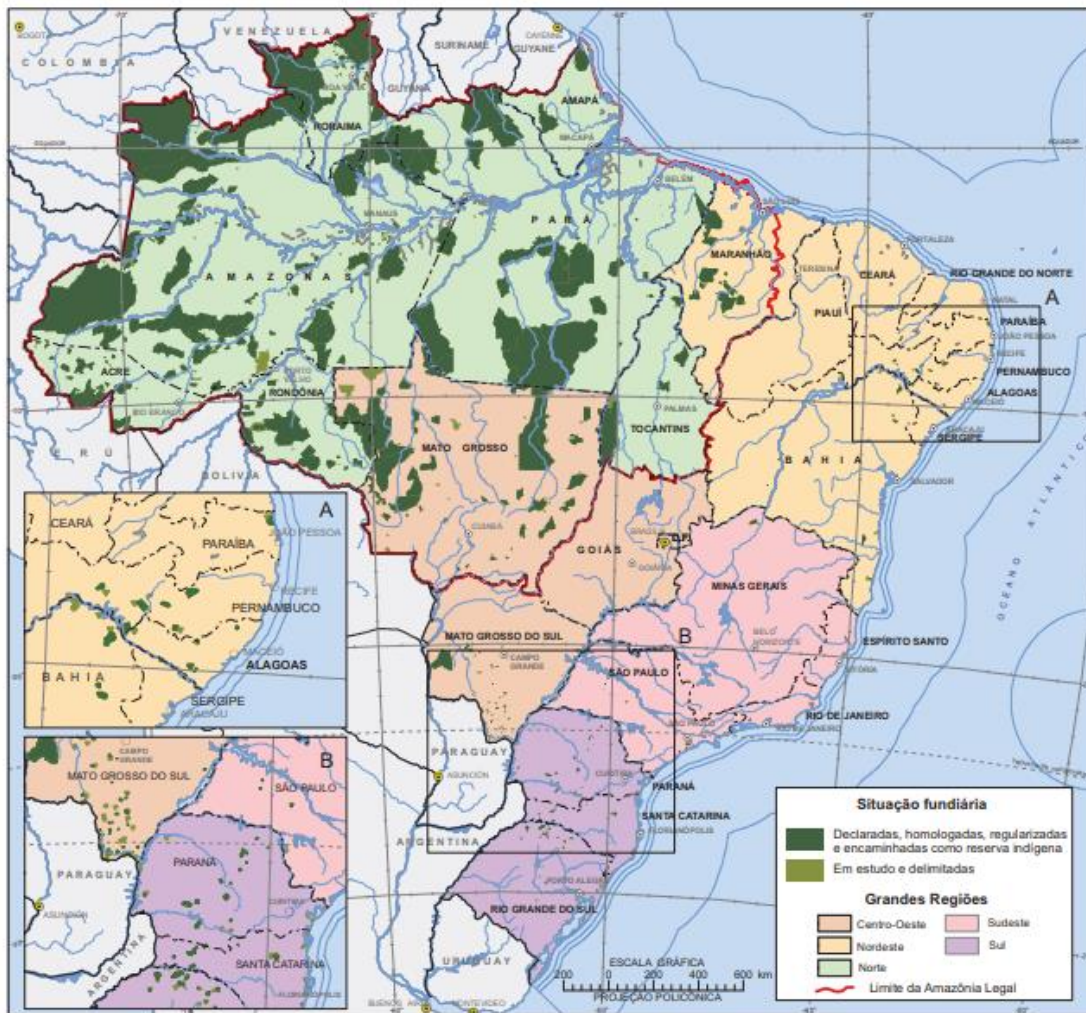


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Figure 3. Indigenous lands, per land situation, 2010



Source: IBGE, 2010

The growth of indigenous land traditionally obtained and regularized by indigenous people is more than considerable, from 4,610,764, 72 hectares in 1988 to more than 117 million hectares in 2019. The indigenous land mark has reflected the growth of the Aboriginal population in Brazil since the 1990s, which in turn allows us to observe the impact of ILO Convention 169 of the 1988 Constitution. Significant advances regarding the regularization of indigenous lands could be observed after them, which allows us to note how an adequate and legitimate legislation is the first step to guarantee the indigenous right of origin.



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4. The Demarcation Process of the Raposa Serra do Sol Indigenous Land

The demarcation of indigenous lands has always been a controversial process in Brazil, since the interests of large landowners overlap with traditional peoples and the law. The Raposa Serra do Sol region in Roraima is marked by conflicts that have been very well defined throughout history. On the one hand, there are the rice producers and the government of the state of Roraima, which since 2005 have objected to decision of the Federal Government; On the other hand, there are indigenous peoples and NGOs that defend the maintenance of the rights of groups that live in the limitations of the highlighted reserve. For a critical analysis of this process, it is important to understand its historical process, as well as arguments against and in favor of the Decree of April 15, 2005, aspects that will be addressed in this section (JANESCH, 2008).

The land conflict in the Raposa Serra do Sol region began in the 19th century, but the starting point for understanding the current situation of the litigation will be the year 1992, when FUNAI decides to re-study the claimed area, forming new groups of Works. On May 21, 1993, a conclusive opinion is published in the Official Gazette of the Union, proposing to the Ministry of Justice the recognition of the continuous extension of 1.67 million hectares. Three years later, in 1996, the then president, Fernando Henrique Cardoso signed Decree n. 1,775, which inserts the principle of contradiction in the process of recognition of Indigenous Land (IL), allowing the contestation of the agents affected. As a consequence of this action, we had 46 administrative disputes, both of non-Indian occupiers and the government of Roraima. However, the former minister, Nelson Jobim, signed Decree 80, rejecting all requests made to FUNAI, however proposing to reduce approximately 300 thousand hectares, removing villages, roads and farms titled by Incra. In 1998, Minister of Justice Renan Calheiros, signed Decree 890/98 on December 11, declaring IL Raposa Serra do Sol permanent possession of indigenous peoples in a continuous area. Between 1999 and 2004, there were many requests for annulment of the decision of the Ministry of Justice, mainly of the government of Roraima. In 2004, for example, Judge Helder Girão Barreto, of the 1st Federal Court of Roraima, suspended part of the decisions of the Ministry of Justice, when it demarcated the reservation by Decree 890/98. In August, the STJ and STF denied the request of the Federal Public Ministry and the Federal Attorney General's Office to overturn the TRJ's decision (LIMA, 2008; BARBOSA, 2015).

In 2005, the Ministry of Justice launches a decree maintaining the head office of the city of Uiramutã and the roads that cross the reserve out of indigenous land. The then president, Luís Inácio Lula



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da Silva, signs the homologation of the indigenous land Raposa Serra do Sol, by decree April 15, 2005. In response to the presidential decision, the governor of the state of Roraima, Ottomar Pinto, decrees official mourning for a week, and file a Popular Action with the intention of canceling the above decree. It is important to remember that the STF enters with another action with the same request.

It is important to highlight some controversial points in the 2005 decree. Articles 1 and 2, for example, stipulated the demarcation of land with a continuous area of 1,747,646 hectares, for the permanent possession of the indigenous groups Ingarikó, Makuxi, Patamona, Taurepang and Wapixana. Meanwhile, Articles 3, 4 and 5 highlight:

Art. 3º. The Monte Roraima National Park is a public asset of the Union subject to a legal regime of double affectation, destined to the preservation of the environment and the realization of the constitutional rights of the Indians.

§ 1º. The Monte Roraima National Park will be jointly administered by the National Indian Foundation - FUNAI, the Brazilian Institute of Environment and Natural Renewable Resources - IBAMA and the Ingarikó Indigenous Community. [...]

Art. 4º. Under the terms of Decree 4,412, dated October 7, 2002, the Armed Forces, for the defense of the national territory and sovereignty, and the Federal Police Department of the Ministry of Justice, are ensured in order to guarantee safety and security, public order and protect indigenous constitutional rights in the Raposa Serra do Sol Indigenous Land.

Single Paragraph. The Armed Forces and the Federal Police Department shall use the necessary, adequate and proportionate means to perform their legal and constitutional attributions.

Art. 5º. The prerogative of the President of the Republic is protected, in case of real necessity, duly proven, adopt the necessary measures to affect the public assets of the Union of indispensable use for the defense of the territory and national sovereignty, as well as to exercise the police power administrative order to guarantee security and public order in the Raposa Serra do Sol Indigenous Land. "(BRASIL, 2008).

As can be seen above, the Armed Forces have guaranteed access in the territory demarcated, with the justification of being a defense of the indigenous constitutional right, as well as Brazilian territory and national sovereignty. The most intense conflict caused by the demarcation of the Raposa Serra do Sol indigenous land was with the farmers, who in 2006 entered the justice system with the purpose of recovering the possession of their lands, which in this period were in the demarcated area. In April of the same year, the STF rejected the request of the farmers (JANESCH, 2008).



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The situation became tenser for those who were against the decision of the STF, when in 2007, it overturned the injunction granted by the minister Carlos Ayres Britto, which ensured the continuation of 12 agricultural and livestock companies that were within the reserve. In September, the State of Roraima filed a precautionary action against the Federal Government and FUNAI, requesting the partial suspension of the Ministry of Justice decree, as well as the presidential decree requesting the expansion and demarcation of the reservation, affirming alleged illegalities in the process of demarcation of the area (JANESCH, 2008).

In 2008, the STF denied the request for a precautionary action by the State of Roraima, which filed another action, requesting the annulment of the anthropological report that was fundamental for the demarcation of the Raposa Serra do Sol indigenous land. Federal Police begins Operation Upakaton, whose aim was to remove non-Indians from indigenous land, such as small landowners, traders and large rice farmers. Faced with the resistance that the present demarcation encountered, the STF suspends the action of the Federal Police. It is important to emphasize that the STF does not make decisions regarding the size of the indigenous land, but in relation to the validity of the demarcation process (JANESCH, 2008).

The main arguments against the demarcation of the Raposa Serra do Sol indigenous lands, are: 1. Loss of national sovereignty; 2. Excess of land and weakening of the economy; and; 3. Demarcation by islands. As for the first argument, proponents believe that the ban on military movement in the region could endanger national security, given the strategic position of the reserve, on the northern border of the country. For Janesch, this problem was solved in article 4 of the decree of April 15, 25, which emphasizes that the Armed Forces may make use of the necessary assets with the purpose of assuring national sovereignty. Thus, the State's defense institutions would have ample freedom of action at the border.

Regarding the second argument, it is worth noting that this one is presented as being the most forceful against the demarcation, it is noteworthy that the Raposa Serra do Sol reserve represents 46% of the State of Roraima, that is, it would be a lot of land for 15,000 Indians. As can be seen in Article 231 of the Greater Law.

“Art. 231. The Indians are recognized for their social organization, customs, languages, beliefs and traditions, and the original rights to the lands they traditionally occupy, and it is the duty of the Union to demarcate, protect and enforce all their property.

§ 1º. The lands traditionally occupied by the Indians are those inhabited by them on a permanent basis, those used for their productive activities, those indispensable to the preservation of the environmental resources necessary for their well-being and those



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necessary for their physical and cultural reproduction, according to their uses, customs and traditions” (BRASIL, 2006, p. 60).

The State of Roraima claims to have lost 6% of its economy with the demarcation of the indigenous lands Raposa do Sol. According Genor Faccio, president of the Association of Rice Growers of Roraima (AARR) before the departure of the rice farmers of the reservation, the production of rice was 20 hectares, after the withdrawal of the same, this has stagnated for three years is 11 000 (OLIVEIRA, 2014). In the words of the president:

"Currently, I plant 50% less than I planted at Raposa. The areas for planting in the state are very limited, and moving from one place to another makes it unfeasible and generates even damage. In addition, we need government tax incentives to compete with trade in Boa Vista" (OLIVEIRA, 2014).

Since in the past Indians occupied all land of the Brazilian territory, there is a group that argues that the demarcation of indigenous lands must be restricted to lands where there are Indians, such as the critics of the demarcation through the third argument highlighted above. They believe that the demarcation should be changed, ceasing to be continuous to be reconstituted in the form of islands, which in turn would guarantee indigenous property and the interests of the State of Roraima. This aspect is counter-argued by people like Castro (2008), who states:

The Constitution does not open the possibility for the government to demarcate areas to their pleasure, being null or void all the acts that exorbitant the Brazilian constitutional order, which does not provide for the so-called continuous area demarcation, that is, that includes spaces and the particular properties located between the lands defined by the Constitution as indigenous, whether urban or rural (2008, p. 1).

Baldi (2008) reaffirms the inefficiency of the demarcation by islands, portraying what happened in Mato Grosso do Sul, where the proximity between Indians and white man led to the multiplication of the news about suicide, alcoholism and child deaths. Thus, there is an indication through this author on the need to make an anthropological study very carefully before joining the demarcation of the indigenous lands through islands.



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Meanwhile, defenders of the demarcation of the indigenous land of Raposa Serra do Sol have as their main instrument the legislation in force, which protects indigenous rights, as we have pointed out previously. On the subject of this research, we can mention as legal instruments that favor the defenders of the demarcation of the indigenous land Raposa Serra do Sol: ILO Convention 169 and the 1988 Constitution, which were previously highlighted, the Land Statute (1964) and the Indian Statute (1973), which seek to fill the flaws of the Federal Constitution on the subject.

In order to deal with the historical land problems of Brazil, Law No. 4,504 created the Land Statute on November 30, 1964. Reydon (2011) points out that such a regulatory framework was a major institutional innovation regarding land issues in Brazil, especially since the creation of the rural real estate registry. In general terms, the law regulates the rights and obligations related to rural real estate, with the objective of implementing agrarian reform and the promotion of agricultural policy.

§ 1° Agrarian Reform is considered as a set of measures aimed to promote a better distribution of land, through changes in the regime of its ownership and use, in order to comply with the principles of social justice and increase of productivity.

§ 2° Agricultural Policy is understood as the set of measures to protect land ownership, which are intended to guide, in the interest of the rural economy, agricultural activities, either to guarantee them full employment, or to harmonize them with the process of industrialization of the country. (BRASIL, 1964)

Article 2 of the Statute further states that "everyone is afforded the opportunity of access to land ownership, conditioned by their social function, in the manner provided for in this Law" (BRAZIL, 1964), and much stands out on the social function of land, which occurs integrally in some situations, defined in this same article:

§ 1° Land ownership fully fulfills its social function when, simultaneously:

- a) favors the well-being of the owners and the workers who work there, as well as of their families;
- b) maintains satisfactory levels of productivity;
- c) ensures the conservation of natural resources;
- d) observes the legal provisions that regulate the right labor relations between those who own it and cultivate it (BRASIL, 1964).

In relation to indigenous land, however, the Land Statute is very superficial, presenting only one paragraph that has its guarantee, in the second article:



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Art. 2° The Union, the States and Municipalities, as well as the organs of their respective indirect administrations, within the limits of their competence, shall be responsible for the protection of indigenous communities and the preservation of their rights:

I - extend to the Indians the benefits of common legislation, whenever possible its application;

II - assist indians and indigenous communities that are not yet integrated into the national communion;

III - respect, by providing the Indians ways for their development, the peculiarities inherent in their condition;

IV - ensure the Indians the possibility of free choice of their means of subsistence and livelihood;

V - guarantee to the Indians the voluntary permanence in their habitat, providing them with resources for their development and progress;

VI - respect the process of integration of the Indian to national communion, the cohesion of indigenous communities, their cultural values, traditions, customs and customs;

VII - implement, whenever possible through the collaboration of the Indians, the programs and projects that tend to benefit the indigenous communities;

VIII - to use the cooperation, the spirit of initiative and the personal qualities of the Indian, with a view to improving their living conditions and their integration into the development process;

IX - guarantee to the Indians and indigenous communities, under the terms of the Constitution, the permanent possession of the lands they inhabit, recognizing their right to the exclusive enjoyment of natural wealth and of all profits in those lands;

X - guarantee to the Indians the full exercise of civil and political rights that may be applicable to them (BRASIL, 1973).

It is only in the Indian Statute, Law No. 6,001 of December 1973, elaborated nine years after the Land Statute, that the question of ownership of indigenous land is made more explicit. In the speech, the main objective of the law is to regulate the legal situation of the Indians or silvicultural communities and indigenous communities, preserving their culture and seeking to integrate them into society. The second article of the law exposes responsibilities that aim the protection of indigenous communities, as well as the preservation of their rights (PASSOS; BENATTI, 2017).

Article 18 reinforces that "indigenous lands may not be subject to a lease or any legal act or business that restricts the full exercise of direct ownership by the indigenous community or by foresters" (BRAZIL, 1973). In the first paragraph of this article it is further stated that "in these areas, any person outside the tribal groups or indigenous communities is prohibited from hunting, fishing or collecting fruits, as well as from farming or extractive activities" (BRAZIL, 1973). The law safeguards the right to possession of indigenous land, which according to Article 38 of the Statute "... are unusable and on them can not be expropriated, except as provided in article 20" (BRAZIL, 1973). The circumstances that allow intervention in indigenous lands, according to article 20, are:



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Art. 20. Exceptionally, and for any of the reasons listed below, the Union may intervene, if there is no alternative solution, in an indigenous area, as determined by decree of the President of the Republic.

1° The intervention can be decreed:

- a) to end the fighting between tribal groups;
- b) to combat serious epidemic outbreaks, which may lead to the extermination of the indigenous community, or any harm which endangers the integrity of the silvicultural or tribal group;

c) by imposition of national security;

d) for the realization of public works that interest the national development;

e) to suppress the disturbance or robbery on a large scale;

f) for the exploitation of subsoil riches of relevant interest for national security and development.

2° The intervention will be carried out under the conditions stipulated in the decree and always by persuasive means, which may result, according to the seriousness of the fact, one or more of the following measures:

a) restraint of hostilities, avoiding the use of force against the Indians;

b) temporary displacement of tribal groups from one area to another;

c) removal of tribal groups from one area to another.

3° Only the removal of a tribal group shall be permitted when it is impossible or inadvisable to remain in the area under intervention, and the equivalent of the previous community, including ecological conditions, shall be assigned to the indigenous community.

4° The removed indigenous community will be fully compensated for the damages resulting from the removal.

5° The act of intervention will have the direct assistance of the federal agency that exercises the tutelage of the Indian (Grifo Nosso, BRASIL, 1973).

Another strong argument from the defenders of the reserve demarcation refers to the low population density of Roraima, which would not represent a very large loss for the state. According to Baldi (2008), the present state has 400 thousand inhabitants, that is, 0.57 km² / hab. In addition, farmers do not reach 1% of the reserve (180 km²), with a population density of 3 km² / inhab. They affirm that there is no city installed in the reserve, and that Vila Uiramutã was the last town to be removed from the Raposa Serra do Sol Indigenous Land (JANESCH, 2008).

Therefore, the arguments against and in favor of the demarcation of the Raposa Serra do Sol indigenous land continue to exist today, and what needs to be kept in mind is which of them will be in force in the coming years, and moreover, what future can be expected for the agents involved in the conflict. To what extent is it possible to understand the complexity of native indigenous law? How can rice farmers be compensated for the expropriation of their cultivated lands? To what extent does the conflict of interest between federal institutions delegitimize the demarcation process. These and other questions need to be raised in a new debate.



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FINAL CONSIDERATION

The debate about the demarcation of the Raposa Serra do Sol indigenous lands appears at the end of 2018 with a new meaning. President-elect Jair Bolsonaro argued that such an area should be explored rationally, since it is one of the richest regions in the world, which could provide gains in royalties, and would not necessarily imply the exclusion of indigenous people from the reserve, but integration into society. For Bolsonaro, a capitalist exploration and well organized by big companies and the Brazilian state could lead to gains for both sides. The new head of state defends the creation of the Niobio Valley in the Raposa Serra do Sol indigenous reserve, since in this territory there are niobium deposits (BRAZIL DE FATO, 2018).

It is important to emphasize that such ore is extremely strategic for the contemporary capitalist economy, since if it is mixed with iron, it creates a kind of superliga, lighter and more resistant than ordinary steel. Niobium can be used in gasoline, turbines, car chassis, even in space rockets and nuclear reactors (FOLHA DE SÃO PAULO, 2018). It is important to note that Brazil already has the largest niobium deposit in the world, in Araxá in the state of Minas Gerais. Exploitation of these mines has been carried out by the Brazilian Mining and Metallurgy Company (CBMM) for more than 50 years and is responsible for supplying approximately 75% of the world market, with a production of 70 thousand tons per year, at a price of 40 dollars/kg. According to journalist and environmental manager André Trigueiro, "estimating global economic growth of 4% a year, these deposits would normally serve the market for another 400 years" (BRAZIL DE FATO, 2018).

In view of the economic potential that niobium allows for the future of the Brazilian economy, President Bolsonaro defends a discourse that seeks to direct the economic exploitation of the reserve in a rational way, that is, distancing itself from the traditional relationship that the Indian has with the land and its resources, but transforming them into a asset of producing capitalist wealth.

The theme is also of interest to another character on the team of the new president - General Augusto Heleno, chief minister of the Office of Institutional Security (GSI). For Heleno, the continuous demarcation of the Raposa Serra do Sol indigenous lands opens the way for the emergence of an "autonomous state" on the northern border of the country (BRASIL DE FATO, 2018). Thus, it is observed that the group opposed to the demarcation of this reserve has gained strength with the arrival of the new government, which has



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not only the current head of state to strengthen the discourse, but also other key figures that make up the team of Bolsonaro.

Faced with such demonstrations, retired STF minister Carlos Ayres Britto commented in an interview with journalist Bernardo Mello Franco of the newspaper O Globo that there were no reasons for questioning, since indigenous lands belonged to the Union, so that there were no risk to national sovereignty. For the former minister, Jair Bolsonaro can not make changes to the demarcation because it is a case that has already become final. "It was a historic decision. For the Indians, it is an acquired right," Ayres said, adding that "once the state pays a historical, civilizing debt, it can no longer reverse the payment and return to being a debtor "(FOLHA DE SÃO PAULO).

Meanwhile to Minister Marcus Aurelius, the prevalence of the historical redemption of debt is undue, simply because it considers that Brazil, at some point, was inhabited exclusively by the Indians. In the course of his vote, the minister discussed the limitations to the freedom of Brazilians to come and go in the reserve area, a situation that for him would be a "true apartheid." The fact that not all the indigenous communities in the reserve area were heard in the administrative demarcation process was also criticized (BARBOSA, 2015).

It is noted that the demarcation of the Raposa Serra do Sol indigenous land will still instigate much debate, since the arrival of the new government strengthened the group that questions the decision of the Federal Supreme Court, calling into question a historical decision and that already processed and judged, in accordance with Brazilian laws. It is possible to observe that not simply the demarcation of the lands of the reservation that is at stake, but also the legitimacy of the Brazilian laws and of all traditional way of life of the indigenous communities that live in Brazil. This is because, once the process has already been processed and judged, questioning the decision may cause legal instability in similar cases. In addition, if the contestations are to be deferred, other indigenous reserves that have already been demarcated and homologated will be at risk. The consequences of the debates surrounding the case of the Raposa Serra do Sol need to be better analyzed by Brazil, and the international community, since indigenous rights and the very survival of this population is at risk.



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