

A HARMFUL AND ARBITRARY ACT

The Brazilian Anthropological Association (ABA) expresses its repudiation of the recent Act N° 303, elaborated by Federal Attorney's Office and published on July 17th in the Federal Official Gazette. Under the pretext of standardizing the understanding of government bodies concerning the implementation of the so-called supplementary "conditions" for the recognition of indigenous lands listed by the Supreme Court in the TI Raposa/Serra do Sol ruling, this Act intends to impose an interpretation of the legislation regarding indigenous rights that is at total variance with indigenous interests, with the principles enshrined in the 1988 Brazilian Constitution, and with international conventions of which Brazil is a signatory.

It is an absolutely arbitrary and inadequate decision to try to deal with complex and fundamental questions of indigenous policy through a simple government decree. The so-called "conditions" established in a very specific judicial case, full of singularities, cannot be treated in such a grotesque and mechanical fashion, in complete disregard of the multiple anthropological and juridical interpretations they may receive.

The act further ignores, in a gross and blatant way, indigenous policy and the distribution of competences and mandates among different public bodies. It dismisses the efforts developed by the National Indian Foundation (FUNAI) and the General Secretariat of the Presidency themselves, carried out in multiple forums, directed to the regulation of the right to consultation, by turning this right into a dispensable procedure each time a government agency understands, based on entirely internal criteria, that it is dealing with an issue of overriding national interest (art. 1º, items 5, 6 and 7). On the other hand, by a simple stroke of the pen, without any justification, the decree transfers to the Chico Mendes Institute for Biodiversity Conservation the responsibility and power to manage and control a huge number of indigenous lands (Art. 1º, items VII, IX and X).

To the alert reader the Act leaves no room for doubt: without any doctrinal foundation and not taking the required steps to study the question deeply or promote the debate needed for the consolidation of a democratic understanding of the issues involved, the AGU picked up a variety of disparate questions posed to government in its dealings with indigenous communities and tried to impose the most restricted and negative interpretation possible regarding indigenous rights.

The ABA considers that, for its superficiality and incongruities, and its intent to restrict and reduce indigenous rights enshrined in the Brazilian Constitution, Act 303 is an absolutely misguided judicial and administrative instrument and asks for its immediate revocation.

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