

On the first day of July of 2008, an *Mbya Guarani* community was evicted by Military Brigade from an encampment situated at the side of the Estrada do Conde road, municipality of Eldorado do Sul, near the city of Porto Alegre, in Rio Grande do Sul.

Unjustifiable errors by the state of Rio Grande do Sul

The cruelty employed was totally unjustified. Police from the Military Brigade (State Police of RS), accompanied by Justice Official Bruce Medeiros, effected the removal on the first of July in RS. Occasioned by the Mandate of Reintegration of possession (Process 165/1.08.0001027), adjudicated through FEPAGRO (State Foundation for Agrarian Research), and granted by Judge Luciane Di Domenico, State Judiciary Power of the District of Eldorado do Sul, RS.

In her decision, the Judge affirms that FEPAGRO “charged that on July 1, 2008, a group of indigenous persons of the Kaingang ethnicity had invaded an area of their property”. In addition to this it reiterates: “Records show that the **same** indigenous group, a few days earlier, had occupied lands belonging to the State of Rio Grande do Sul, also located on Estrada do Conde, in the Industrial District of Guaíba”.

However, the ethnicity encamped on the sides of the road were *Guarani* and not *Kaingang*. The Judge, without soliciting the assistance of FUNAI or any other orientation of specialists, accepted the arguments of the State Prosecutor and sustained the idea that it dealt with the same indigenous group.

The situation is very serious, in that the Guarani encampment was OUTSIDE of the property of the FEPAGRO, which is clearly contrary to Judicial Action itself, and augments the irregularity of the action. The Military Police, together with the employees of FEPAGRO, collected the artisan crafts and destroyed the structures of the Guarani habitations, which can only be done with the authorization of the FUNAI or the Federal Police, those being the only competent parties for dealing with the indigenous question according to Article 231 of the Federal Constitution. The Cacique Santiago Franco requested the presence of these institutions, however that right was not respected and, for insisting on this, was handcuffed and arrested and forced to a police vehicle, leaving his family members, women and children abandoned.

The State Court considered the previous occupation as a precedent for the *Guarani* occupation. Moreover, the *Guarani* never crossed the fence that divides the property of FEPAGRO from that of the public domain. Clearly, we can see that this does not deal with the same property, nor of the same municipality, nor even of the same indigenous group. These questions, were raised by the researchers of the Federal University of Rio Grande do Sul(UFRGS), who obtained as response from the official Bruce Medeiros the following response: “all the same we are completing the action”.

Researchers and those documenting from the Anthropological Nucleus for Indigenous and Traditional Societies, NIT-UFRGS, which was present at the scene, were asked by the Guarani themselves, to record the facts in a video-documentary, in spite of insistent “requests” made by the justice official and military police that they stop filming. The video shows that the *Guarani* were removed, in truth, under the coordination of FEPAGRO, author of the action, this fact confirmed by Captain Fernandes, of the Military Brigade, and by the Court Official Bruce Medeiros, who admit being there to “support the action of the FEPAGRO employees”.

In this way, we ask: is an expedited order to the *Kaingang* indigenous people and applied to the *Guarani* indigenous people, judicially valid? Can FEPAGRO use cars and employees to remove an indigenous people who are OUTSIDE of their property, such as the *Guarani*, who were on the side of the road? Why was Mr. Augusto Cunha, Director of FEPAGRO present in the operation coordination and action, which included signing as witness to the Action of Reintegration and Possession? And further, how is it possible that such action be supported by MPs and by a Court Official? How is the State of Rio Grande do Sul able to use its police power to execute actions of this character?

The Area of Arroio de Conde

According to Cacique Santiago himself, “my ancestors lived here, we have proof that this land is *Guarani*”. This statement finds resonance in the article “The Archeological Site of ‘Arroio do Conde’”, a study made in 1975, by the archeologist Sérgio Leite, whose Guarani archeological artifacts compose part of the exhibit of the Archeology and Ethnology Laboratory of the Federal University of Rio Grande do Sul. The Archeologist maintains that, “it is presupposed that the arroio must have had a very great importance to the indigenous [people], the site would have been related to hi, as a factor of food and transport”.

The research had been initiated when the UFRGS received the notification that “the Municipal Prefecture of Guaíba was removing soil and that this led to the discovery of archeological evidence”. The study indicates that, already in the decade of the 70s, “the agricultural and industrial sectors dynamize practically the entire municipal economy (of Guaíba). Presently, these sectors contribute with the greatest tax revenue for the Municipal Prefecture. Food industries, manufacture and processing of paper and cardboard, cellulose and vegetal pulp, being the tonic of industry in Guaíba”.

Then, we perceive the intense industrial interest in this region that has for decades disrespected the indigenous territory, counting on public institutions for this. The occurrence on Wednesday, July 1 of 2008, set off more than thirty years of action against the indigenous presence in the region, orchestrated by industries. In this case, the FEPAGRO that according to Judicial Mandate, is a “center of research reference in the areas of parasitology together with the FAO (World Organization for Food and Agriculture of the United Nations) and in the service of diagnostics together with Ministry of Agriculture and Water [supply] in RS”, it is also the mentor of this action of removal and disrespect of the indigenous communities.

Another question raised is: how can a renowned institution like FEPAGRO insist on disrespecting the indigenous presence in the region? And further, how can the FAO/UN and the Ministry of Agriculture finance an institution capable of such action that disrespects nothing less than the Federal Constitution? Article 231 of the Brazilian Magna Carta, in Chapter VIII which addresses the Indians, paragraph 5 states: “**The removal of indigenous groups from their lands is forbidden, except, *ad referendum* of the National Congress**, in the case of a catastrophe or an epidemic that represents a risk to their population, or in the interest of the sovereignty of the Country, after decision of the National Congress, it being guaranteed that, in any circumstance, the return shall be immediate as soon as the risk ceases”.

In this case of the first of June 2008, the removal of the Guarani families from the Area of Arroio do Conde damaged Article 231 of the Federal Constitution and, in view of the fact that the Judicial Action passed over the National Congress, places the Judge that approved it in a complicated situation. Certainly Dr. Luciane Di Domenico will have to go by the judgment of the Regional Federal Tribunal (TRF) that, according to Article 108 of the Federal Constitution, section II, grants competencies to the Regional Federal Tribunals, “to judge, at the level of appeal, cases decided by federal judges and by state judges in the exercise of the federal competence within the area of their jurisdiction”.

In the Judicial Action, the State Prosecutor of RS, representing FEPAGRO, maintains that the question can be treated at the state level, because “it does not properly speaking, deal with a matter whose genesis is seated in ‘indigenous rights’, this being about the area in question never having been any possessory dispute nor doubt or indication of that having been the prior object of possession of the communities or indigenous peoples”.

However, had the Judge consulted FUNAI, knowledgeable that the area was the object of Archeological Study of Professor Sérgio Leite and that, in addition to this, the area is currently in Process of Identification in the FUNAI as traditional Guarani land. Besides this, Guarani leaders Santiago Franco and José Cirilo Morinico, state that within the area there is an ancient Guarani cemetery and that their Guarani relatives had lived there for approximately forty years. Evidently, we are faced with a situation of aggression as much against indigenous peoples as the Brazilian Federal Constitution, to Convention 169 of the ILO and to the Universal Declaration of the Rights of Indigenous peoples of the United Nations.

The families removed have ties to another Guarani community of Porto Alegre and hope for defense of Human Rights from national and international institutions, energetic actions before the the government of the State of Rio Grande do Sul.

Support Team

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