

Statement of Concern over Bill that threatens the rights of Indigenous Peoples to their ancestral lands

ClientEarth is deeply concerned about the consideration by the Brazilian Senate of a Bill which threatens Indigenous Peoples' rights to their ancestral lands.

On 30 May, the lower house of the Brazilian Congress, the Chamber of Deputies, passed Bill 490/2007, which places restrictions on the demarcation or legal recognition of Indigenous territories. The Bill was introduced by a group of lawmakers that represent agri-businesses, and favours the interests of large agricultural companies as well as the mining and logging sectors, with reduced protections for Indigenous territories making way for these industries' use of the land. It is now under consideration by the upper house of the Brazilian Congress, the Senate, as Bill 2903/2023.

Brazil's Supreme Court is currently preparing a ruling which will decide whether this new legislation is constitutional, and will be instrumental in determining the future of Indigenous rights in Brazil. We note that a ruling by the Court could overturn the Bill even if it passes in the Senate.

Under the so-called "marco temporal" thesis introduced by this Bill, Indigenous communities' right to demarcate their lands is limited to those areas that they occupied when the 1988 Brazilian Constitution came into force. Many Indigenous Peoples had already been expelled from their lands by 1988, and this Bill will violate those communities' right to occupy their ancestral lands. The Indigenous movement in Brazil, spearheaded by the Articulation of Indigenous Peoples of Brazil (APIB), argues the *Indigenato* thesis: Indigenous Peoples' right over their land is an "original right" which predates the creation of the Brazilian State. It is important to note that Article 231 of the Brazilian Constitution recognises Indigenous Peoples' right to "the land they traditionally occupy", with no time constraints or arbitrary deadlines. The Constitution explicitly places the responsibility on the federal government to demarcate Indigenous territories.

Were the Bill to pass, it could negatively impact the outcome of more than 300 pending land demarcation cases in Brazil, and could also trigger a review of cases where land has already been demarcated.

Where Indigenous land is not demarcated, Indigenous Peoples lack clear legal title over their land which makes them more vulnerable to encroachment by land-grabbers seeking new areas for agricultural, logging and mining activities. This situation provokes and exacerbates conflicts over land, which often turn violent. In 2021, Brazil was the country with the third highest recorded number of killings of land and environmental defenders.

Denying Indigenous Peoples access to their ancestral lands violates their human rights under international law, including their right to life, to traditional livelihoods, to culture and to a healthy environment.

The Bill will also have serious adverse environmental, biodiversity and climate impacts. Indigenous territories often overlap with native ecosystems, such as the Amazon rainforest and Cerrado savanna. When given control over their lands, Indigenous Peoples prove to be the most effective at protecting native ecosystems and their biodiversity. Tropical forests and savannas play an important role in regulating the global climate by sequestering and storing carbon. Degradation and loss of ecosystems therefore also causes greenhouse gas emissions, as the carbon that was stored in trees and plants is released into the atmosphere as carbon dioxide. Indeed, deforestation and forest degradation is the second largest source of greenhouse gas emissions globally. By denying Indigenous Peoples legal title over their lands, this Bill threatens the ecosystems they house and poses serious climate risks.

ClientEarth expresses deep concern regarding this Bill and the severe threat it poses to the rights of Indigenous Peoples and to the environment. ClientEarth stands in solidarity with the Indigenous Peoples of Brazil and calls for the protection of their fundamental rights and the preservation of their ancestral lands. We recognise the important role that Indigenous Peoples play in the protection of the environment and biodiversity, and in the global effort to prevent and mitigate climate change.

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