



June 5, 2023

Mr. Francisco Cali Tzay

U.N. Special Rapporteur on the Rights of Indigenous Peoples

RE: Urgent: Situation of Indigenous Peoples in Brazil - Bill 490 and Marco Temporal Case

Dear Mr. Cali Tzay,

The undersigned organizations are writing to draw your attention to a concerning development in Brazil regarding legislation approved by the Lower House of Congress based on the “Marco Temporal” thesis, as well as the imminent decision by the Federal Supreme Court on the same matter. This legislation seeks to impose limitations on the demarcation of Indigenous lands, which play a crucial role in safeguarding the Amazon rainforest and other Brazilian biomes, its Indigenous Peoples and their human rights. As organizations committed to upholding the rights of Indigenous Peoples, we find it imperative to bring this matter to your attention and seek your intervention in addressing this concerning situation.

On May 30, Brazil’s Chamber of Deputies approved Bill [490/07](#), with [311 votes in favor](#), 137 against, and 1 abstention. The bill poses significant risks to the rights of Indigenous Peoples. This bill, now awaiting to be voted at any moment by the Senate under Bill 2903/2023, threatens Indigenous territories and other lands under claim as it seeks to legitimize the “Marco Temporal” thesis, which has long been a point of contention. This thesis imposes an arbitrary cutoff date for land recognition based on the understanding that Indigenous Peoples should only have the right to the demarcation of lands that were in their possession on October 5, 1988, the day of the adoption of Brazil’s current Constitution.

By doing so, the bill undermines the rights and aspirations of Indigenous communities, putting obstacles in the way of their rightful claims to ancestral lands. It is crucial to recognize the far-reaching implications of this legislation and the potential harm it could inflict on Indigenous Peoples and their cultural heritage. The bill incorporates several concerning elements, such as granting the government the authority to open hydroelectric and mining projects while also expanding road networks within Indigenous territories without seeking the prior and informed consent of Indigenous communities, which directly violates the rights set on the ILO Convention 169, ratified by Brazil. Currently, there are 285 processes of land demarcation stalled in Brazil. If the “Marco Temporal” thesis is approved, all Indigenous Lands, regardless of their status and region, will be evaluated according to the thesis, putting all 1393 Indigenous Lands under direct threat. The bill explicitly indicates that its regulation would be applicable to all these pending cases, exacerbating the situation by further prolonging or potentially obstructing the demarcation process, and exposing Indigenous communities to conflicts, mining-related contamination, uprising violence and threats of their social and cultural rights.

Additionally, the bill not only poses a significant threat to lands that are still under claim but it also directly affects fully recognized Indigenous territories, allowing the review of their demarcation processes. If this bill is approved by the Senate, it would not only violate the fundamental rights of Indigenous Peoples, but it would also lead to severe and irreparable environmental damage further aggravating the climate crisis we all face.

All of the above occurs as the Supreme Court of Brazil prepares to rule on a case examining the constitutionality of the “Marco Temporal” thesis, that could further cement predatory Indigenous land appropriations. **The ruling of this case is scheduled to take place this coming June 7th**, and it will be decisive for the rights of Indigenous Peoples, to their ancestral lands, and for their survival. It is important to point out that the Supreme Court case is separate from the Bill 2903/2023 that will be debated by the Senate.

The Constitution of Brazil acknowledges the rights of Indigenous Peoples to the lands they have historically inhabited, with no imposed time constraints or arbitrary deadlines. It explicitly places the responsibility on the federal government to demarcate and safeguard these Indigenous territories. However, the lack of clear titling puts these lands at heightened risk of encroachment by individuals engaged in unlawful land seizures and environmental offenses. This situation further exacerbates land disputes and perpetuates violence against Indigenous Peoples.

While the communities themselves are mobilizing - and receiving support from broader Brazilian social movements - international expressions of solidarity and concern for the situation are crucial, especially from politically influential actors like you.

We believe that now is the moment to express international solidarity and concern, and encourage you, as the U.N. Special Rapporteur on the Rights of Indigenous Peoples, to issue an open letter, accompanied by a public statement expressing your thoughts on this piece of

legislation and legal thesis that could amount to disastrous consequences for Brazilian Indigenous Peoples rights, the environment and global climate stability.

We would also like to respectfully request an urgent meeting with you, and leaders of the Indigenous Peoples of Brazil. We urge you to listen to them and their commitment to fight for their ancestral lands and territories.

Organizations:

Amazon Watch

Amnesty International

Avaaz

Greenpeace

Robert F. Kennedy Human Rights

Rainforest Action Network

Rainforest Foundation Norway (RFN)

Rainforest Foundation US (RFUS)

Washington Brazil Office (WBO)