

# The Temporal Milestone violates indigenous rights and harms Brazil

Via [APIB](#)

In Brazil, President Jair Bolsonaro has never made a point of keeping up appearances. Elected with his prejudices, his main target is the native peoples: “If I take office, the indigenous will no longer have an inch of land,” he said, while still a candidate.

We live in a democracy, and even Jair Bolsonaro must obey the Constitution. Since October 5, 1988, when the Constitution was promulgated, the indigenous people have had the same rights and duties as any other Brazilian. In addition, it guaranteed them, on paper, the ownership of their lands and that their customs and traditions would be respected. This conquest did not fall from the sky; it is the fruit of much struggle. And definitive peace has not yet arrived.

After more than 30 years, there is no indigenous child who grows up without worrying about the future of his community. Women are affected by gender violence from invaders, by food vulnerability – which impacts their children – and by companies that compromise the quality of water and soil. All of these problems are stimulated and magnified by territorial insecurity.

A very important case for indigenous peoples will begin to be analyzed by the Federal Supreme Court (STF) on August 25. The judgment of the extraordinary appeal 1.017.365, of general repercussion, can guarantee them the much-dreamed-of peace, putting aside once and for all a ghost that has haunted them for years: the Temporal Milestone.

This ill-fated thesis intends to state that only the people who were occupying their ancestral lands on the day the current Constitution was promulgated would have the right to them, even if they had been removed from them by the use of violence. If it prevails, it could make the demarcation of new territories unviable.

The "time limit", however, does not resist the slightest questioning. To begin with, it was not even foreseen in the Magna Carta – which, in its 3rd article, seeks precisely to overcome a past of domination and privileges, and to make our society advance towards a more just and egalitarian future.

It is absurd to suppose that acquired rights cease to exist, even more so from a retroactive date. What would happen to the indigenous people who were not in possession of their traditional lands on October 5, 1988? Would they be condemned to exile? Would they no longer be able to exercise their identity rights?

On November 28, 2007, the Inter-American Court of Human Rights, in the case "Saramaka v. Suriname", recognized that the Americas have been marked by the expropriation of the territories of the original peoples, and that they have been reconstituting their collective life in this process of diaspora. Therefore, the moment when a land is occupied in a traditional way is absolutely irrelevant for the purpose of asserting territorial rights. The Supreme Federal Court itself recognizes that "there is no such thing as an indigenous person without land".

When the Constitution determines that traditionally indigenous lands are defined as such based on the "uses, customs and traditions" of each people, it certainly also placed the notions of occupation and abandonment under this perspective. Indigenous peoples do not want to reclaim Copacabana or Ipanema, because they are no longer traditional areas. Many others are, however, and they are dying for lack of

determination from the Federal Executive. The struggle for indigenous territorial rights has already surpassed 500 years.

It will not be lost, because it defines its own existence.