

Shoved Out

The Guaranis, indigenous people of Morro dos Cavalos in Brazil, are being displaced from their lands to satisfy the interests of politicians and businesses

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The current Brazilian political situation is very worrying as far as the indigenous problem is concerned. It is even more worrying if we consider Brazil's ethnic diversity, with 305 ethnic groups that include 896,000 people declared as indigenous, according to the 2010 demographic census carried out by the Brazilian Institute of Geography and Statistics (IBGE). Besides the prejudice, injustice and the insufficiency of public policies, indigenous people must struggle every day to secure their lands. These struggles have become increasingly difficult because of the current government's political maneuvering. On 19 July 2017, a legal opinion issued by Attorney General Grace Mendonça

the rights of indigenous people over their lands are defined as original rights, which go back even before the formation of the State of Brazil. The land rights are original and, therefore, cannot be restricted to any "time reference".

The "time reference" is contrary to the Federal Constitution, as it breaks with the indigenous rights, requiring proof of indigenous possession over that territory, without considering the fact that many indigenous people were violently expelled from their lands and would not be occupying them before 5 October 1988. Opinion 001/2017/AGU – known as the "anti-demarcation opinion" by indigenist and indigenous people – opens the possibility of re-discussing the lands already demarcated, and expelling the indigenous communities from their lands, as well as hindering and paralyzing new demarcations. The cut-off date also contravenes the Union's duty to protect indigenous lands, as well as Article 231, paragraph 5, of the Federal Constitution, which forbids the removal of the indigenous people from their lands.

The Brazilian Public Federal Ministry, through a technical note (No. 02/2018-6CCR), requested the annulment of opinion 001/2017/AGU, stating that it is unconstitutional, being "a deliberate denial of rights enshrined in the Constitution of the Republic, in international human rights law and infra-constitutional legislation". In the note, the Federal Public Ministry also states that the opinion is used as an artefact to evade the rights of indigenous people to their territories, and implies a "paralysis of

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(opinion 001/2017/AGU) was endorsed by President Michel Temer, which aims at reassessing indigenous land demarcations and restricting their land rights.

According to opinion 001/2017/AGU, the demarcated lands can only be considered indigenous lands if they are under the possession of indigenous people before 5 October 1988 – the day the Federal Constitution was promulgated. Despite the reference to the Federal Constitution, the "time reference" contradicts the premise of the indigenous rights in the Constitution, which states that

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the demarcations of indigenous lands, generating risks and legal uncertainty of repeal of acts already constituted, of potentiating conflicts between indigenous and non-indigenous (people)". The Federal Public Ministry mentions more than once in its technical note how the opinion violates international human rights law, which can lead to a risk of abrogating the international responsibility of the Brazilian State.

Contrary to the technical note of the Federal Public Ministry, the Minister of the Federal Supreme Court, Alexandre de Moraes, issued an opinion stating that indigenous Guarani lands in the state of Santa Catarina should be reviewed on a "time reference" basis. On 6 June 2018, federal and state deputies appealed to the Minister of Justice and National Indian Foundation (FUNAI) to request that they re-evaluate the demarcation of the Guarani indigenous lands, specifically the Indigenous Land Morro dos Cavalos, based on the "time reference" and on the opinion of the Minister, Alexandre de Moraes. However, the survey conducted by FUNAI shows the opposite: Indigenous people have been in the area claimed for decades, including in 1988, and the demarcated land never ceased to have the indigenous presence. According to the Guarani of the Indigenous Land Morro dos Cavalos, there have always been Guarani in this land, not only before 1988, but before the arrival of the colonizers in 1500.

On 19 April 2004, Brazil ratified the International Labour Organization Convention No. 169 (C169), through Decree 5051. However, the "time reference" does not comply with many of the fundamental points of the Convention. One of them is the emphasis on the participation of indigenous people in national and local policies that affect them directly. At no time were the indigenous people consulted during the formulation of opinion 001/2017/AGU. This opinion also grossly disregards the whole of C169 relating to land tenure, as mentioned in article 14, paragraphs 1 and 2: "1. The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall

be recognized. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect. 2. Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession".

The "time reference" disrespects the C169 because it not only prevents new demarcations but also opens the way to re-discuss land that has already been demarcated. It thus fails to guarantee property rights and land tenure, and removes lands already demarcated and guaranteed for indigenous people. In article 16 of C169, it is mentioned that indigenous people: "... shall not be removed from the lands which they occupy" (paragraph 1), but under exceptional circumstances (paragraph 2), they may be relocated, with their free and informed consent. Thus, the decision of Minister Alexandre de Moraes not only violates the first paragraph of the above article 16 but also the second paragraph, since at no

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time was the decision taken jointly with the Guarani indigenous people. They do not wish to leave their territory at all.

Besides all these happenings, the Guarani of the Indigenous Land Morro dos Cavalos resist, in spite of the strong pressures that they are suffering on their land, pressures that occur beyond the juridical front. In 2017, their boats were burned in a criminal fire that was never investigated. The intention was

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to set their villages on fire, but because of the direction of the wind, only some trees caught fire. The Guarani who inhabit the Morro dos Cavalos are of two subgroups: Mbyá and Ñandeva, which have as food source, fishing, hunting, and products derived from their fields. Unfortunately, they have lost access to sea fish when their boats were burned, but they can still fish in the river as long as they have their land guaranteed.

The guarantee of access to the river and the sea is very important for the Guarani people of the Indigenous Land Morro dos Cavalos. According to the anthropologist Martín César Tempass, the Guarani of the subgroup Mbyá present a very special relationship with the fish, since the fish serves as food, not only material but also spiritual. The fish is responsible for nourishing the souls and raising the spirituality of the Guarani. To attain such spirituality, which they call “soul perfection”, the Mbyá Guarani are dedicated to a series of rules established according to their cosmological foundations. The food rules are decisive to the construction of this spirituality they wish for. The fish are indicated for the construction of bodies and perfect souls, showing the importance of fish and fishing for the Mbyá Guarani people. However, to continue to have access to the fish, the Mbyá and Ñandeva need the guarantee of their land. Thus, opinion 001/2017/

AGU, together with the decision of the Federal Supreme Court Justice, puts them at risk of losing the Indigenous Land Morro dos Cavalos, denying these indigenous communities access to their food security and reproduction of their cultural, social and spiritual practices.

Opinion 001/2017/AGU aims to remove indigenous people from their lands to satisfy the interests of the wealthy agribusiness, mining interests and politicians, who, in the case of the Indigenous Land Morro dos Cavalos, have already consolidated their interests in building a railroad within the territory of the Guarani. This unconstitutional opinion seriously violates indigenous rights in accordance with national and international law. The current government has the distinction of demarcating the least number of indigenous lands in the history of the country since democratization; not only did it not demarcate, but it is also creating precedents, through the “time reference”, to do something that has never been done before – to remove the indigenous people from their already demarcated lands. However, the Guarani people are resisting and together with them, we will support the struggle for the rights of indigenous people. 3

For more

http://www.stf.jus.br/repositorio/cms/portalStfInternacional/portalStfSobreCorte_en_us/anexo/Constitution_2013.pdf

Constitution of the Federative Republic of Brazil 1988

https://www.socioambiental.org/sites/blog.socioambiental.org/files/nsa/arquivos/2017apib_report_indigenous_situation_brazil.pdf

Michel Temer's government acts to violate indigenous peoples' territorial rights

<http://www.agu.gov.br/atos/detalhe/1552758>

A legal opinion issued by Attorney General Grace Mendonça (Parecer nº 001/2017/GAB/CGU/AGU, dated July 19th, 2017)