Photo gallery: Fighting for their rights in the streets of Brasilia

Over the last few days, the country experienced the largest indigenous protest in their history anticipating the upcoming decision by the Federal Supreme Court regarding the Ibirama - La Klânõ indigenous land. The experts believe the decision will set an important precedent for land rights. While agribusiness and mining companies expect lands to be considered as they were demarcated before the Federal Constitution of October 5, 1988, indigenous peoples are fighting for the Judiciary to acknowledge the traditional rights to their territories.

By Ricardo Verdum - September 1st, 2021

Between August 23 and 27, the city of Brasilia witnessed the largest public protest by indigenous peoples in Brazil in defense of their land rights. Close to 6,000 indigenous people from over 160 communities from different parts of the country expressed their opposition to establish October 5, 1988 –when the current Federal Constitution was enacted- as the final date to prove the indigenous peoples’ right to their lands. This legal argument is promoted by those in the agribusiness, mining activities, the garimpeiros, lumberers, landowners, the rural tourism business, and other illegal occupants interested in exploiting areas that traditionally belong to indigenous peoples.
By the end of June, the Federal Supreme Court (in Portuguese, STF) confirmed that on August 25 or 26 it would decide on the case of the Ibirama-La Klânô indigenous land: a territory inhabited by the Xokleng, Kaingang, Guaraní, Guaraní Mbya, and Guaraní Ñandeva peoples. The conflict started when the government of the State of Santa Catarina challenged the demarcation by means of an extraordinary appeal.

Previously, the Court established their decision would have “general application”, that is why indigenous peoples were drawn to the capital of Brazil. In other words, the decision made by the STF will guide the Federal Government and other courts of the Judiciary when settling disputes related to the acknowledgement of indigenous peoples’ land titles. Likewise, it will act as precedent for legislation enacted to regulate land rights.

Therefore, the conflict brings into the open the legal dispute between the adoption of the “indigenous right thesis”, that is, the traditional right of indigenous peoples to their lands, or the adoption of the “time frame thesis”. The latter is based on the Binding Normative Opinion by the Attorney General’s Office (in Portuguese, AGU) on July 19, 2017, which was approved by the then President of the Republic, Michel Temer. It is, now, explicitly endorsed by the current president, Jair Bolsonaro, whose main political support is the rural caucus.

If the Federal Supreme Court supports the opinion by the Attorney General’s Office, the National Indian Foundation (in Portuguese, Funai) could even carry out a general revision of all indigenous lands already demarcated, and also demarcate other areas where no indigenous occupation has been evidenced before October 5, 1988. The only problem here is that the Funai is currently politically controlled by the agribusiness. In fact, between February and November 2020, the evangelist pastor Ricardo Lopes Dias was appointed leader of the General Coordination of Isolated and Recently Contacted Indigenous Peoples despite the critiques made by indigenous and human rights organizations.
The history of violence against the Xokleng who live in Ibirama – La Klănõ and the forced displacement they were subjected to during the twentieth century is an example of the absurdity of considering the enactment of the Federal Constitution as a reference to establish land rights. Contrary to the expectations of 6,000 indigenous people who traveled to Brasilia, the STF postponed its decision once more to September 1. This day is awaited with both illusion and hope by those who had to return to their territories and those who could stay in the city.

The indigenous peoples’ position has already been presented and widely shared. It is the Federal Supreme Court’s turn to confirm the traditional right of indigenous peoples to their lands, as established in the Federal Constitution of 1988.

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