

Brazil court rules for Indigenous land rights in key case

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A Brazilian Indigenous man follows the trial at the Supreme Court on whether to restrict native peoples' rights to claim their ancestral lands on a screen outside the facility in Brasilia on September 21, 2023.

A lopsided majority of Brazil's Supreme Court ruled Thursday against an effort to restrict native peoples' rights to protected reservations on their

ancestral lands, in a win for Indigenous activists and climate campaigners.

Indigenous leaders in bright feather headdresses and body paint exploded in celebration outside the high court building in Brasilia as Justice Luiz Fux became the sixth on the 11-member court to side with the native plaintiffs in the landmark case, giving them victory.

The judges voted one by one and in the end, the tally was a 9-2 win for Indigenous people opposed to the restriction.

"Justice is on the side of Indigenous peoples," said Joenia Wapichana, the head of the government's Indigenous affairs agency, FUNAI.

"Today is a day to celebrate the death of the 'time-frame argument.'"

The so-called "time-frame argument" at the center of the case held that Indigenous peoples should not have the right to protected reservations on lands where they were not present in 1988, when the country's current constitution was ratified.

The plaintiffs argued that violated their rights, given that many native groups were forced from their ancestral lands, including during the military dictatorship that ruled Brazil from the 1960s to 1980s.

'Impossible debt'

Indigenous activists had dubbed the case the "trial of the century."



Brazilian Indigenous women celebrate after Brazil's Supreme Court ruled against efforts to restrict native peoples' rights to reservations on their ancestral lands in Brasilia on September 21, 2023.

After Fux's ruling, Justice Carmen Lucia also sided with the majority, as did two more judges, bringing the final vote to 9-2.

"Brazilian society has an impossible debt to pay to native peoples," Lucia said in her ruling.

The only two justices to rule in favor of the "time-frame argument" so far were appointed by former far-right president Jair Bolsonaro (2019-2022), who fulfilled his vow while in office not to create "one more centimeter" of protected Indigenous reservations in Brazil.

Bolsonaro is an ally of Brazil's powerful agribusiness lobby, which backed the "time-frame" limitation.

He presided over a surge in destruction in the Brazilian Amazon during his presidency, when average annual deforestation increased by more than 75 percent from the previous decade.

Environmentalists had joined Indigenous activists in pressing for the court to reject the time-frame argument. Numerous studies have found protected Indigenous reservations are one of the best ways to fight deforestation and, with it, climate change.

Brazil's constitution makes no mention of a cutoff date in relation to Indigenous reservations, which currently cover 11.6 percent of Brazil's territory, notably in the Amazon.

Leftist President Luiz Inacio Lula da Silva, who defeated Bolsonaro in elections last year, has resumed creating Indigenous reservations since taking office in January, and also created Brazil's first ministry of Indigenous affairs.

Brazil has more than 700 recognized Indigenous lands, though around a third are still awaiting official designation as reservations.



Brazilian Indigenous men outside the Supreme Court in Brasilia celebrate as the court rule against efforts to restrict native peoples' rights to reservations on their ancestral lands.

Payment issue

The case was brought by the Xokleng, Guarani and Kaingang peoples of the Ibirama-Laklano indigenous reservation in southern Brazil, part of which lost protected status when a lower court ruled the groups were not living on the land in question in 1988.

They say that is because Brazil's military dictatorship forcibly removed them.

The Supreme Court ruling will set legal precedent nationwide.

It came as Congress was debating legislation that would have enshrined the 1988 cutoff date in law. A bill to that effect already passed the lower house, and was working its way through the Senate.

Further legal battles remain for Indigenous activists.

The Supreme Court majority must still decide the touchy subject of whether damages should be paid to property owners who lose land to newly created Indigenous reservations.

Justice Alexandre de Moraes, who sided with the Indigenous plaintiffs, proposed the payment of such damages in his ruling.

Indigenous leaders condemned the proposal.

"We're not against damages for small landholders, but that should not be part of this case... otherwise, a lot of conflicts could erupt," said Kreta Kaingang of the Association of Brazil's Indigenous Peoples.

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