



**From Victory to uncertainty:
Indigenous Land Rights in
Brazil**

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The 21st of September 2023 should have marked a turning point for indigenous land rights in Brazil, with 9 out of 11 Supreme Court justices voting in favour of the Xokleng people's land claims and in turn rejecting the "marco temporal" (time frame thesis). However, in a government where the far-right still holds significant power, it may come as no surprise that just a week later on the 27th of September, the Senate approved a Bill that would make the time frame thesis law. If this happens, it could lead to serious repercussions for the country's indigenous communities and the environment.

What is the "marco temporal" and who are the Xokleng?

The "marco temporal" (Portuguese for 'time frame') is a legal thesis which states that indigenous groups cannot claim land that they were not living on on the 5th of October 1988, the day the Constitution came into effect. This is a thesis that is seen by many of its detractors as an unfair loophole as, throughout the history of Brazil, indigenous peoples have been forcibly removed from their original lands or massacred long before this date, meaning that they are unable to defend their claim to the land.

The Xokleng, an indigenous group from the southern Brazilian state of Santa Catarina, are central to the current debate surrounding the "marco temporal". Throughout the 19th and early 20th century, they suffered brutal persecution from *bugreiros* - groups of white mercenaries sent out to kill them to make way for new German settlers in the region. In 2009, they were evicted by the state's Environmental Institute from part of their lands that forms part of a nature reserve. With support from the Funai (the National Indigenous People Foundation), the Xokleng took their case to court but lost because the Environmental Institute was able to use the "marco temporal" to undermine the indigenous group's claim to the land.

In the face of defeat, the case was taken to the Supreme Court, and in 2019 the process to review Xokleng's claim to their lands and the validity of the "marco temporal" began.

Why victory for the Xokleng means victory for all

On the 21st of September 9 out of the 11 justices of Brazil's Supreme Court voted in favour of the Xokleng's case and simultaneously rejected the time frame thesis. This decision is important because it will have an impact on how land claims made by other indigenous groups throughout the country will be judged. With the defeat of the "marco temporal", many cases that have been paused may resume and hopefully take into consideration centuries of persecution that have forced indigenous communities away from their ancestral lands.

The Senate and Bill 2903

Even with the apparent defeat of the anti-indigenous legal thesis, many indigenous rights activists and groups were aware that there was a chance the pro-agrobusiness Senate would still push for the “marco temporal” to become law. This is exactly what happened on the 27th of September when it approved Bill 2903. According to APIB (the Articulation of Indigenous Peoples in Brazil), this Bill would not only make the time frame thesis law, but it would also allow for the construction of hydroelectric power plants and motorways in indigenous territories, encourage illegal mining and land grabs and make it possible for land demarcation processes or land that has already been demarcated to be contested. For this reason, APIB and other groups are calling for president Luís Inácio Lula da Silva to veto the Senate’s decision.

The main argument of those in favour of the “marco temporal” is that the livelihood of farmers and their families will come under threat if it means that the land they cultivate returns to indigenous groups. On the other hand, it is widely understood that in places occupied by indigenous communities, the biodiversity is protected. When we consider the fact that Brazil, being home to large sections of the Amazon Rainforest - an ecosystem vital to the health of the entire planet - it’s clear that the fight to protect indigenous land rights is synonymous with the fight against climate change globally.

Whatever Lula and his government decide in the next few weeks will be crucial not just for Brazil’s indigenous communities, but for us all.

References:

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The Mathurin Hybrid Initiative