

# INDIAN LAW RESOURCE CENTER

CENTRO DE RECURSOS JURÍDICOS PARA LOS PUEBLOS INDÍGENAS

UNITED NATIONS HUMAN RIGHTS COUNCIL

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The Indian Law Resource Center and the Coordinating Group of Indigenous Organizations of the Brazilian Amazon ("COIAB"), offers this joint statement about a dangerous new law being considered by Brazil's Supreme Court, Law 14.701/2023, that would directly undermine indigenous peoples' land rights and other fundamental rights and is already causing great harm.

For many years, anti-indigenous activists in Brazil have sought to amend Brazil's constitution to diminish Indigenous land rights. Specifically, they have sought to effectively annul or alter Article 231, which guarantees that "Indians shall have. . . their original rights over the lands they traditionally occupy [recognized], and it shall be incumbent upon the Union to demarcate, protect and enforce all their possessions".

While the Constitution is clear, anti-indigenous activists have invented a new legal theory called the "temporal milestone (*“marco temporal”*) theory", which would limit Brazil's constitutional obligations to demarcate, protect and guarantee respect for all indigenous lands only to lands on which indigenous peoples lived exactly on October 5, 1988, the date the Constitution was adopted.

This theory violates Brazil's Constitution, runs counter to decades of legal and political practice in Brazil and has already been ruled unconstitutional by Brazil's Supreme Court. It threatens rights recognized in the UN Declaration on the Rights of Indigenous Peoples, Convention 169, the American Declaration and jurisprudence of the Inter-American System.

The *marco temporal* thesis would deny legitimate land claims and it would reward land grabbers and perpetuate human rights violations. It would impose a radical new test for establishing which lands therefore eligible for protection. Few, perhaps hardly any, lands would meet the proposed test.

The law will reward violations of Article 10 of the Declaration, which prohibits forced removal or relocation without free, prior, and informed consent. It will prevent indigenous peoples from revitalizing their cultural traditions and customs linked to their lands, in violation of Article 11. It would impose an arbitrary and unfair definition of Indigenous lands that would violate Article 26.

Indigenous land rights are essential to nearly all indigenous rights, including rights to self-determination and self-government. This law is a terrible threat to Brazil's indigenous peoples.