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Brazilian Indigenous people take part in the second march of Indigenous women to protest against President Jair Bolsonaro in Brasilia Sept. 10. An estimated 6,000 Indigenous people, along with Catholic church leaders, camped in Brazil's capital for more than a month, hoping to convince the country's Supreme Court to reject a bid to remove Indigenous land rights. (CNS photo/Adriano Machado, Reuters)



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SAO PAULO, Brazil — September 21, 2021
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An estimated 6,000 Indigenous people, along with Catholic church leaders, camped in Brazil's capital, Brasilia, for a more than a month, hoping to convince the country's Supreme Court to reject a bid to remove Indigenous land rights.

The issue revolves around the so-called "time-frame thesis," which claims that Indigenous people are not entitled to land they were not physically occupying when the Brazilian Constitution was enacted Oct. 5, 1988.

Indigenous tribes fear the court could rule against their claims to traditionally inhabited territories, opening vast tracts to mining operations and agribusiness.

"They want to remain in these territories. They are concerned about what the future will look like for their children and grandchildren," Capuchin Franciscan Fr. Mateus Bento dos Santos told Catholic News Service.

Dos Santos is the coordinator of the Archdiocese of São Paulo's Indigenous pastoral ministry and joined the campers from Aug. 20 to Sept. 16 to "accompany them in their fight."

The demarcation of Indigenous lands was guaranteed by Brazil's 1988 constitution and gave Indigenous people "original right" to ancestral lands. The constitution considered Indigenous people the "first and natural owners of the territory," stating that it was the country's obligation to demarcate all lands originally inhabited by the country's more than 300 tribes as Indigenous territory.

Capuchin Franciscan Fr. Mateus Bento dos Santos, in headdress, joins others during a march f

Capuchin Franciscan Fr. Mateus Bento dos Santos, in headdress, joins others during a march for Indigenous rights in early September in Brasilia, Brazil. (CNS photo/Marina Oliveira, courtesy CIMI)

The case before the Supreme Court focuses on the situation faced by the Xokleng people in Santa Catarina state. The court will decide whether land currently inhabited by the tribe should be returned to the government of Santa Catarina and private rural property owners.

If the court overturns the case, it is likely that lawmakers will have to change the text of a similar, anti-Indigenous bill pending in Brazil's Congress or have it deemed unconstitutional. Experts say the time-frame thesis has been used by the government of President Jair Bolsonaro to block Indigenous land demarcations.

The decision is expected to affect the future of at least 300 demarcation processes involving Indigenous lands currently being analyzed, as well as dozens of other land

claims that have yet to be filed by Indigenous groups. If the thesis is accepted by the court, Indigenous peoples may be expelled from lands they inhabit if they cannot prove that they were there before 1988.

"It would be a huge setback, a factor of legal uncertainty and would paralyze new demarcations," said Antonio Eduardo Cerqueira, executive secretary of the Indigenous Missionary Council, which is linked to the Brazilian bishops' conference.

For the past four years, dos Santos has worked with the Guaraní Mbya and the Tupi-Guaraní people, who live in São Paulo's metropolitan region and along the state's coastline.

The priest said that although Tupi-Guaraní arrived in the region in the 1970s, and the Mbya have used the territory as a passage for decades, the demarcation on the lands has not been finalized. He fears the court's decision may affect these populations.

"The adoption of the time-frame thesis would be the denial of the entire history of these populations," dos Santos said.

Tupi-Guaraní and the Guaraní Mbya identified the lands as places inhabited by spirits, and the place where their ancestors were buried, he said.

"The Guaraní need to feel the land ... feel the energy of the earth, the spirituality, so that they can stay. They want to stay where their God, Nhanderu, lives," he said.

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Those supporting the time-frame thesis and opposed to further Indigenous demarcations argue that the Indigenous lands under study are expanding into areas that generate the highest agricultural yields. The impact of setting aside more land for Indigenous people could lead to an estimated loss of 1.5 million jobs and a reduction of more than $68 billion in agricultural production, they said.

On Sept. 10, Supreme Court Justice Edson Fachin started the voting by rejecting the thesis and reaffirming that Indigenous rights cannot be changed.

"Indigenous territorial rights consist of a fundamental right of Indigenous peoples and are materialized in the original right over the lands they traditionally occupy,"

Fachin said.

Until 1988, he added, traditional populations were governed by a state that acted to "integrate" these peoples into Brazilian society, leaving Indigenous people with no legal recourse against the theft of their lands.

Indigenous groups agree.

"The thesis is unfair because it disregards expulsions, forced removals and all the violence suffered by the Indigenous people until the promulgation of the constitution. Furthermore, it ignores the fact that, until 1988, they were protected by the state and could not enter the court in a proper manner to fight for their rights," Indigenous campsite leaders said in a statement.

"We want the constitution to be respected and for [Indigenous] peoples to have the right to their territories. Territory is life for indigenous people," dos Santos added.

The trial, however, was suspended in mid-September when another justice asked for more time to review the case. With no date set for the hearing to resume, Indigenous people from more than 175 tribes who had camped out started leaving Brasilia, promising to return.

Dos Santos and his colleagues said they also will return and camp again if necessary.

"I'm willing to follow through on this fight until the end," he said. "I'm leaving now because the camp is disbanding, but if they [Indigenous people] come back to Brasilia, I'll come back here with them."