

Paying for Inalienable Land?

Compensation, Public Finance, and the Safeguarding of Indigenous Land Rights in Brazil

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Summary

A 2023 ruling by the Brazilian Federal Supreme Court (STF) affirmed the possibility of compensating non-Indigenous occupants holding land titles in areas designated as Indigenous Lands (ILs). By making such compensation a central issue in land demarcation, the ruling raises important questions about the protection of Indigenous land rights. This brief analyses the background and implications of these policy challenges and argues that legal authorities and policymakers should adopt strict criteria to safeguard Indigenous land rights and avoid paying compensation for illegally grabbed land.

Background and policy challenges

Indigenous peoples in Brazil have a fundamental right to the recognition, titling and protection of their traditional lands. Under the 1988 Brazilian Federal Constitution, these rights are considered 'originary right', meaning they predate the State itself. Indigenous lands cannot be acquired, occupied, or transacted by non-Indigenous actors. This principle is reinforced by article 231 §6 of the Constitution, which establishes that "legal acts and contracts which have as their object the occupation, ownership and possession of lands [that are traditionally occupied by Indigenous peoples] (...) are null and void and have no legal effect; such nullity and extinguishment shall not give rise to a right to compensation or to legal action against the Federal Government, except, in accordance with the law, in respect of improvements resulting from occupation in good faith". The article draws a clear distinction between bare land and improvements made in good faith: the latter are eligible for compensation, whilst the former are not.¹

Until recently, the prevailing view within the judiciary and the federal public administration was that compensating non-Indigenous occupants for land titles overlapping with Indigenous Lands was legally impossible. This changed as actors aligned with the agribusiness sector

¹ The term 'bare land' refers to the soil of a rural property, considering only its surface area and native vegetation, without including buildings, crops or improvements made by occupants.

Key messages

- Compensation for land titles within Indigenous Lands (ILs) conflicts with constitutional protections and risks rewarding land grabbing.
- Recent regulations are overly permissive, exposing the State to substantial compensation costs and hindering Indigenous land demarcation.
- Compensation should be limited to strictly valid land titles, based on clear state error, and should not hinder Indigenous access to their traditional territories.



increasingly demanded compensation, arguing that Indigenous territorial rights created legal uncertainty and hindered economic development. Indigenous movements countered that such claims sought to preserve an agrarian order historically anchored in land concentration and in the fraudulent, illegal usurpation of public lands.

In September 2023, the Brazilian Federal Supreme Court (STF) ruled that non-Indigenous land holders should, under certain conditions, receive compensation when Indigenous lands are demarcated. Congress subsequently enacted Federal Law 14,701/2023, which codified bare land compensation for non-Indigenous occupants. The statute was questioned through constitutional review suits in the STF, which in 2025 and 2026 issued new rulings on the topic (STF, 2025; 2026).

These developments raise fundamental questions about the constitutional basis for compensation, which titles should qualify, and how such payments can be reconciled with Indigenous peoples' right to access their traditional lands.

Risks of emerging regulation and proposed safeguards for Indigenous land rights

Recent STF rulings and Federal Law 14.701/2023 have paved the way for compensation for private land titles within Indigenous lands. This section examines eligibility, legal justification, and possession rights during the compensation process, arguing that strict standards for compensation are preferable to more flexible ones, both from a budgetary and from an Indigenous rights perspective.

a) Which titles are eligible for compensation?

Both the 2023 STF ruling and Federal Law 14,701/23 use the term “just title” to identify land titles eligible for compensation. In Brazilian civil jurisprudence, a ‘just title’ (*justa causa possessionis*) is a document which *appears* suited to transfer land ownership or real rights but is marked by a structural deficiency which keeps it from being fully effective.

While this concept protects good-faith possessors against third parties, its application to Indigenous constitutional law generates significant risks. Historically, land grabbing in Brazil has often relied on forged deeds and fraudulent registrations that create an appearance of legality. Once such titles are transferred to an ostensibly good-faith buyer, they may qualify as “just titles”. A broad reading of the STF ruling and Law 14,701/23 could make holders of titles with fraudulent origins eligible for compensation.

The concept of a “valid title” is far more rigorous. A valid title must derive from a lawful transfer of land from the public to the private domain and be supported by an unbroken chain of title. Because all land in Brazil was originally public, titles lacking either condition are null and void.

Using these stricter criteria to determine compensation eligibility would help prevent the rewarding of illegal land grabbing and reduce the budgetary costs of Indigenous land demarcation under the new compensation regime.

b) Legal basis for compensation

The second important issue addressed by the recent regulations is the legal basis for bare land compensation. Brazil’s 1988 Federal Constitution provides that land titles overlapping with Indigenous lands are extinguished upon demarcation and does not offer grounds for compensation claims.

To circumvent this mandate, the STF and Federal Law 14,701 established that compensation arises not from demarcation itself, but from State error, that is, the fact that the State issued

title to land that was inalienable. But the exact contours and limits of the State error doctrine are absent from both the STF ruling and the federal statute.

In 2025, the Federal Attorney-General's Office (AGU) warned against an overly broad interpretation of State error. It argued that compensation should apply only where the State had wrongly granted formal title to unavailable land, not where titles are invalid or result from fraud, irregularities, or collusion between private actors and public officials.

This restrictive interpretation better safeguards Indigenous rights and protects public finances. It avoids compensating holders of invalid 'just titles' or paying compensation for land that remains public property. Without a title lawfully issued by the State, and without a valid transfer of the land from the public domain, there should be no right to compensation.

c) Right of retention

A third topic addressed by the STF and Federal Law 14,701 is who gets possession over the land while the compensation processes are resolved. Allowing non-Indigenous land holders to remain on lands already demarcated as an IL severely limits Indigenous constitutional rights.

In Leading Case 1,031, the STF decided that non-Indigenous occupants have a right to retain possession until the uncontroversial portion of compensation has been paid (STF, 2023). This creates a tension between the alleged right of retention and the constitutional "originary" Indigenous right to land. As the National Indigenous Articulation (APIB) has argued, delays caused by compensation disputes can prolong violence, environmental harm, and barriers to Indigenous access to their territories, sacred sites, and livelihoods.²

We concur that a right of retention is incompatible with the Constitution and with Indigenous rights. Compensation claims should be handled in separate proceedings that do not delay demarcation or prevent Indigenous communities from effectively accessing their lands.

The costs of compensation invalid "just titles": preliminary evidence

At least 298 Indigenous lands still await demarcation in Brazil. The cases below illustrate the fiscal implications of applying a permissive versus a strict interpretation of compensation eligibility.³

The first concerns a recently delimited Indigenous territory in Brazil's Central-West region. An audit of 10 overlapping rural properties, based on 92 property records and 223 registration entries, found that none had been lawfully severed from the public domain.

Under a strict interpretation based on valid title and State error, no compensation would be owed, as the land remains public property. Under the broader "just title" approach, however, all 10 occupants would qualify for compensation because they hold property deeds. Based on local market values of around R\$98,000 per hectare and an overlap of approximately 1,500 hectares, compensation would total roughly R\$147 million (US\$30 million) for this single, relatively small territory.

A second case involves a claimant asserting ownership over thousands of hectares overlapping an Indigenous Land situated on prime coastal real estate in the Brazilian Northeast. Utilizing market appraisal methods, the potential compensation totaled an astounding R\$ 3,25 billion (circa US \$650 million USD). Land tenure audits showed that the claim rested on invalid

² Available at: <https://apiboficial.org/2026/08/25/nota-publica-da-apib-em-defesa-dos-direitos-originais-e-contra-a-indenizacao-por-terra-nua-como-condicao-para-a-demarcacao-de-terras-indigenas/>

³ Both cases were investigated under a Decentralized Execution Term (TED) celebrated between the Ministry of Indigenous Peoples (MPI) and the Federal University of Pará (UFPA) which aims to analyse and assess the validity of land titles situated within ILs.

documentation. Under a strict interpretation based on valid title and State error, no compensation would be owed.

These cases illustrate how compensating 'just titles' would require public expenditures in the tens of billions of reais. Such costs risk turning Indigenous land demarcation into a budgetary challenge and undermining the effective realization of Indigenous territorial rights.

Recommendations

We recommend that legal authorities and policymakers adopt three criteria to safeguard Indigenous land rights and avoid rewarding illegal landgrabbing through the novel bare land compensation policy:

- Only strictly valid land titles – those with a clear legal separation from public assets and unbroken chains of title – should be considered eligible for compensation;
- A strict understanding of “state error” should be used to justify compensation; and
- Non-Indigenous occupants should not have the right to retain land possession until compensation is paid.

Conclusion

The institutionalization of bare land compensation by the STF in Leading Case 1,031 and by Congress in Law 14.701/2023 represents a perilous structural regressions in Indigenous constitutional protection. By circumventing the explicit prohibition of Article 231, § 6, this shift has subordinated ancestral territorial demarcation to budgetary considerations, converting an original, inalienable constitutional right into a fiscal liability subject to public expenditure limits and prolonged rights of retention.

To safeguard Indigenous territorial rights and protect the public treasury, Brazilian jurisprudence must establish strict hermeneutic boundaries. Bare land compensation must be strictly restricted to 'valid titles'; and no right of retention should be recognized for non-Indigenous occupants.

Further reading

STF – Supremo Tribunal Federal. (2023a). Recurso Extraordinário nº 1.017.365/SC (Tema 1031 de Repercussão Geral) Extraordinary Appeal No. 1,017,365/SC (Leading Case 1031). Rapporteur: Min. Edson Fachin. Plenary Court, September 27, 2023. <https://portal.stf.jus.br/jurisprudenciaRepercussao/tema.asp?num=1031>

STF – Supremo Tribunal Federal. (2023b). ADPF nº 1056/DF [Action for Failure to Comply with a Fundamental Precept No. 1056/DF]. Requester: Confederação da Agricultura e Pecuária do Brasil – CNA. Rapporteur: Min. Alexandre de Moraes. Plenary Court. Diário da Justiça Eletrônico, December 7, 2023.

STF – Supremo Tribunal Federal. (2026). Acórdão em Ação Declaratória de Constitucionalidade nº 87 e Ações Diretas de Inconstitucionalidade nº 7.582, 7.583 e 7.586/DF [Ruling in Action for Declaration of Constitutionality No. 87 and Direct Actions of Unconstitutionality Nos. 7,582, 7,583, and 7,586/DF]. Rapporteur: Min. Gilmar Mendes. Plenary Court. Diário da Justiça Eletrônico, March 18, 2026. <https://portal.stf.jus.br>

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