

£BRAZIL

@`We are the land'

Indigenous peoples' struggle for human rights

`Indian is land'

In 1991 the Brazilian Government coined the slogan "Indian is Land". It was an acknowledgement of the centrality of land rights to the social, economic, cultural and political survival of Brazil's indigenous peoples. Indians derive their identity from their relationship to land; their survival as unique cultural entities is linked to land. Their right to land they have traditionally occupied is upheld by the 1988 Constitution, which proclaims: "The social organization, customs, languages, beliefs and traditions of Indians are recognized, as are their original rights to the lands they traditionally occupy. The nation must demarcate and protect these lands and ensure the respect of Indian property". Indian land rights were also upheld in the previous constitution.

New legislation to replace the old Indian Statute of 1967 which regulated Indian affairs, and which is now out of line with some of the principles of the new Constitution, is being examined in Congress. This is likely to be the focus of fierce debate about Indian rights in 1993.

In practice these rights have been ignored by land claimants who have abducted and killed Indians to drive them off land sought for the wealth of its resources. Indians who attempt to claim their constitutional rights are in the gravest danger of becoming victims of human rights abuses.

Amnesty International takes no side in disputes over land. What concerns the organization is the persistent failure of successive governments to protect the fundamental human rights of Brazil's indigenous peoples. By failing to arbitrate promptly in disputes between the indigenous and non-indigenous community the state has left indigenous groups ever more vulnerable faced with escalating violence against them. The authorities at all levels have failed to protect the Indians effectively or to bring to justice those responsible for killing, abducting, harassing and threatening them. As a result, human rights abuses continue with impunity.

The pattern is the same irrespective of whether the land is sought by private interests, national and international economic development projects, or by the military on the grounds of national security. Indigenous groups living on disputed land have suffered massacres, selective killings, beatings, threats and harassment. These otherwise common crimes become human rights violations when they are committed with official collusion or acquiescence, for example, when the state consistently fails to investigate them or to bring those responsible to justice.

At present around half of the land recognized as indigenous has been demarcated — designated as areas where the fullest protection afforded by law is available to the indigenous inhabitants. The areas where isolated Indians have been sighted are not yet recognized as indigenous. The 1988 Constitution stipulated that all Indian lands should be demarcated by 1993. Yet resources were not allocated to achieve this. By October 1992 the government Indian agency, FUNAI, had received approximately five per cent of the budget it had sought for the year and for demarcating the remaining 50 per cent of Indian lands. Although indigenous groups on demarcated land are entitled to greater protection, in practice this protection has been denied and the Indians remain vulnerable to attack.

In reality most Indian lands whether demarcated or not are coveted for some form of development. In 1986 the Ecumenical Centre for Documentation and Information (CEDI) and the Brazilian National Geologists Association (CONAGE) published a report on concessions to companies to mine on Indian lands. It stated that mineral concessions had been made on 58 per cent of all demarcated Indian lands, while 13 per cent were affected by hydroelectric projects. The figures for lands traditionally considered to be Indian, but which had not been legally confirmed as such, were higher: mineral concessions had been made on three quarters of non-regularized Indian lands and a third were affected by hydro-electric projects. That same year mining on Indian land was banned. Mining activity continues illegally and is carried out by small-scale independent miners (*garimpeiros*), often backed by larger companies.

The constitutional guarantees of their rights to land has encouraged some Indian groups to reclaim traditional areas. Indian

groups often have traditional rights to land now of interest to more powerful economic groups in the regions they inhabit. In turn, these economic groups often have the backing of state and national politicians. Some of these landowners are powerful local figures. A police chief owns land in the Macuxí indigenous area in Roraima, a mayor owns three estates on land claimed by the Pataxó-hã-hã-hãe in Bahia state, another police chief owns an estate on the Truka indigenous area in Pernambuco.

One of the 1988 Constitution's provisions negates the legal value of any private contracts or agreements to occupy or exploit Indian land which were not made by the federal authorities, as Indian land is regarded as part of the national heritage. This has encouraged some indigenous groups to ignore titles to land in their traditional areas granted to landowners by state governments. As a consequence Indian groups attempting to claim land both traditionally theirs, and guaranteed to them in the Constitution have suffered widespread human rights abuses.

In a 'state of siege'

Many of Brazil's Indian groups have long had contact with non-indigenous society, some since the Portuguese first arrived in 1500. It is estimated that in 1500 there were some five million indigenous inhabitants in the territory that is now Brazil. Current official figures put the indigenous population at 250,000, arranged in 180 different ethnic groups with 170 different languages. These groups vary in size from the Ticuna Indians — 20,000 — to groups with a population as small as 10. The small size of some of these indigenous groups means that the loss of life of a few of their members may have proportionately devastating effect on their very survival. The conditions in which several of these groups now live are little short of desperate. Forced off their traditional lands, and in dispute with powerful local land claimants, many are now living in small isolated groups in overcrowded conditions with inadequate resources, often surrounded by hostile landowners and settlers and at the mercy of hired gunmen who operate with impunity.

Conditions became so desperate on the reserves of one Indian group that a wave of teenage suicides swept the population. Over 60 suicides of Guaraní Kaiowa and Nhandeva Indians were documented between 1990 and mid-1992. Most of the dead were between 14 and 17 years old and most of them either hanged themselves or took poison. The official explanation of the suicides was overcrowding and cultural disorientation on the Indian reserves. The policy of concentrating Guaraní in ever more crowded official reserves had reigned since the 18th century and was accelerated in the 1960s and 1970s. In 1991 FUNAI recorded some 23,848 Guaraní-Kaiowa Indians in 16 areas in Mato Grosso do Sul state. The average area per Kaiowa — 0.892 hectares — was five times smaller than the minimum recommended by FUNAI.

One of the main factors contributing to abuses against Indians on disputed land is the extreme length of proceedings to resolve these disputes. The case of the Guajajara Indians on the Canabrava Indigenous Area in Maranhão state is an illustration of this. For the past 30 years the Indians have been in conflict with settlers who occupied land inside the indigenous area and established the settlement of São Pedro dos Cacetes, despite opposition from the Guajajara and in violation of constitutional provision for the protection of Indian land. Violence culminated with the killing in 1979 of nine pregnant Guajajara women. Following this the National Indian Foundation, FUNAI, the government body responsible for Indian affairs, transferred resources to the Maranhão state government with which to compensate the settlers and relocated them outside the indigenous area. The settlers were not relocated and it is not known what happened to the funds. In June 1992 settlers took hostage seven Guajajara Indians and demanded guarantees from the authorities that if they moved from São Pedro dos Cacetes they would be resettled and receive compensation. The hostages were released within a week, but some 3,000 settlers remain in the indigenous area.

The taking of Indians hostage followed a violent raid by federal police in May to crack down on marijuana cultivation in the area. The Guajajara allegedly smoke marijuana in their religious ceremonies but had been accused of selling it in towns nearby. The local branch of the Bar Association and FUNAI officials later took testimonies and condemned the raid. According to their reports a group of nine federal police found women, children and old men in the village and proceeded to beat and otherwise ill-treat them to gain information about the village menfolk. One of the community leaders, Nazare Guajajara, had a revolver placed in her mouth when she challenged the police authority, and asked why FUNAI wasn't present "The law now is us", she was told. "For Indians there is only prison and bullets". A gun was also put in her daughter's mouth. Many of the women and girls were sexually abused, and threatened with rape and death. Nazare Guajajara had bits of pubic hair pulled out. Women and children were handcuffed and machine gun shots were fired over their heads. They were also beaten on the head with gun butts, and kicked. One Indian who had given birth three days before was thrown to the ground with her baby and started haemorrhaging. On hearing the shots, a larger group of Indians from another village came to their

defence and overpowered the police agents until FUNAI officials appeared to negotiate. The Guajajara were so scared that they were convinced that only by holding on to the police weapons would they be safe from attack by the neighbouring town. There had been a series of incidents of assaults on members of the Guajajara by townspeople in the previous months.

On 1 November 1992 26 year-old Augusto Pereira Guajajara son of a Canabrava village leader was shot dead by gunmen from São Pedro dos Cacetes. In reprisal the Guajajara community killed one non-Indian and took 400 of the townspeople hostage, demanding the punishment of the gunmen and the much-promised transfer of the town. The Minister of Justice personally negotiated the release of the hostages and promised that a plan to remove the settlers would be announced in 30 days.

Speedy and just resolution of land disputes is an essential element in preventing further abuses against indigenous groups. Official failure to arbitrate promptly and definitively in these cases is primarily responsible for the continuing conflicts — conflicts of which the Indians invariably become the victims, ill-equipped as they are to defend themselves against violent attacks by landowners and settlers. Many of the latter are themselves also struggling for survival.

The failure to demarcate the lands of the 4,000 Atikum Indians in Floresta, Pernambuco State, was cited in a 1985 report by FUNAI as the principal cause of lawlessness in an area which has become notorious for the illegal cultivation of marijuana and for the violence of those involved in drug trafficking. The report noted: “These irregularities are all caused by the general lack of authority which is easily explained by the failure to define the indigenous area”. In 1988 the International Labour Organisation (ILO), under Convention No 107 on Indigenous and Tribal Populations to which Brazil is a party, observed that the slowness of the demarcation process “at times provokes radical situations which sometimes result in conflicts”.

‘I shall kill more’: the Macuxí

Damião Mendes' body was found by his sister on 25 June 1990. The 35-year-old Macuxí Indian was lying face down in the mud of a river bank. He had been shot in the back of the neck. Nearby lay the body of his nephew, 19-year-old Mario Davis.

Both men came from the Macuxí settlement of Santa Cruz near Normandia, a town on the border between Roraima, Brazil's most northern state, and Guiana. There is little doubt as to who killed them, but he was released without trial after spending a few months in prison.

The basic facts of this case are far from exceptional. Damião Mendes and Mario Davis were killed for land. The investigation into the killing was cursory. No one has been brought to justice. Dozens of Indians in Brazil have been murdered in similar circumstances.

The Macuxí are a semi-nomadic indigenous group, whose ancestral lands lie on the plains of Roraima. Their claim to these lands is hotly contested by cattle ranchers who, since the turn of the century, have used violence to force the Indians to abandon their traditional territorial grasslands. Today some 15,000 are estimated to remain in the interior of the state, inhabiting three main areas, only one of which has been demarcated — officially recognized as an indigenous area where the fullest protection afforded to Indians in law pertains. Another 15,000 Macuxi are believed to live in poverty in shanty towns on the periphery of the state capital Boa Vista.

The community to which Damião Mendes and Mario Davis belonged is situated in one of the Macuxí areas yet to be demarcated, officially known as the Raposa/Serra do Sol Indigenous Area. Raposa/Serra do Sol was identified as an Indigenous Area in 1984, when its boundaries were officially confirmed by FUNAI, the government body responsible for indigenous affairs. However, full demarcation has been stalled by opposition from local ranchers.

There are some 160 farms within the boundaries of Raposa/Serra do Sol, the largest of which is the Fazenda Guanabara. The Macuxí community of Santa Cruz lies on land claimed by the Fazenda and the estate manager allegedly told two other Indians: “I killed two Indians, they're dead and I'm not sorry. I shall give myself up to the police like a man”.

The day after the killings the farm manager presented himself at the police station. His statement was taken and he was immediately released. Police refused to look for the bodies and only visited the scene of the crime, after the bodies had been brought to the village. The farm manager reportedly returned to the Indian area a few days later and threatened the dead men's

relatives: "I've already killed two, and I shall kill more". He then reportedly set fire to the straw collected to construct the roof of Damião Mendes' sister's house. After protests from the Indigenous Council of Roraima, CIR, federal police took over the case and the manager was taken into custody in Boa Vista. He subsequently alleged that he was tortured by police after he had confessed to the crime.

The farm manager was transferred to the Roraima penitentiary. In prison he attacked another Macuxí Indian, Reginaldo Luiz dos Santos. Interviewed in 1991, Reginaldo Luiz dos Santos told Amnesty International that the farm manager had hit him violently and threatened to kill any Macuxí Indian he encountered. In January 1991 FUNAI sought an inquiry into the incident. The farm manager was moved to a different wing of the prison. However, no further measures were taken and in March 1991 he was released from custody and returned to the Guanabara estate. Intimidation by hired gunmen on the Guanabara has continued.

The killings and their aftermath fell into a pattern of repeated attacks on the Macuxí Indians. Although some Macuxí land has been demarcated, most of it is awaiting demarcation. The state government of Roraima has repeatedly expressed its opposition to the demarcation of Macuxí land and state police officers frequently act in the interests of non-indigenous land claimants. Since 1980 the Macuxí have embarked on a cattle breeding project which helps them sustain their communities and stake out the land for which they are seeking demarcation. Most incidents of violence land appear to be related to the Indians' attempts to assert their land rights.

The progressive extension of cattle ranches in traditional indigenous areas has led to a situation whereby Macuxí villages are literally encircled by rival claimants. The Indians are confined by wired fences to small plots of land. They have very little space to grow crops or tend animals and no direct access to their traditional hunting areas or funeral grounds. They have been prohibited from fishing or hunting in surrounding land.

Since 1986 violence against the Macuxí has escalated steadily and several Indians have been killed. In recent years they have been subjected to increasing intimidation and violent attacks by land claimants, often supported by state police, who have themselves been responsible for abuses against the Indians. In July 1987, 19 Indians including five minors were arrested and the adults held for a week in the state penitentiary, after they had disarmed and taken prisoner two gunmen trying to keep them from tending their crops. The operation to detain the Indians involved a helicopter and army personnel. According to a written testimony by Indians present: "They made us lie down on the ground in the rain, while the military mounted a machine gun — in one of the huts pointing at us. They beat men, women and children, broke the doors of our houses, threw food on the ground".

In June 1991, civil police officers tried to evict Indians from Maracana village on the Raposa/Serra do Sol indigenous area, without a warrant, at the behest of a rival land claimant. Several of the Indians were taken to the land claimant's ranch house, where they were held for three days, interrogated, and put under pressure to leave their village. When they refused, two of the Indians were arrested and taken to the state capital, Boa Vista, on the grounds that they had to be "criminally identified" — have their details put on police files. They were not allowed to contact the local FUNAI office, although FUNAI officials must accompany any Indian arrested. They were released without charge the following day.

The Macuxí have also had their houses and cattle pens destroyed by rival land claimants, often accompanied by military or civil police. In December 1991, 15 military police officers accompanied land claimants to the Perdiz Indian village and gave them cover while they destroyed a house, a cattle pen, chicken coops, fencing and pots and pans. They also allegedly took away fishing equipment, hunting weapons and farming tools and filled in the community's two wells.

Damasceno Segundo, a Macuxí Indian, was detained during an illegal police raid on Gavião village near Normandia, on 29 January 1992. According to witness, the police arrested him because he had been fishing in an area claimed by a local landowner. He was reportedly beaten, handcuffed and taken to a land claimant's house, where he was chained to a beam with handcuffs. He managed to escape and went into hiding for two weeks. When he re-appeared he was reportedly still bruised from the beating he received and one of his ear drums had been perforated. This incident occurred during raids on five Macuxí villages in the Raposa/Serra do Sol indigenous area between 28 and 31 January. A joint force of military and civil police officers, accompanied by land claimants with whom the Macuxí are in dispute, raided the villages without any judicial order and warned the Indians not to fish or build houses in the area. Two Macuxí leaders — Waldir Tobias, the Vice Coordinator of the Indigenous Peoples Council of Roraima, and Constançio Macuxí, leader of Constantino village — were detained and

questioned for three hours. The military police captain in command of the operation is one of the claimants to land in the Macuxí indigenous area.

Recently the Macuxí have faced a new threat. Their traditional lands have been invaded by gold miners following official attempts to remove miners from the territory of the neighbouring Yanomami Indians. The level of violence increased sharply, with the Indians facing harassment and assaults, sometimes fatal. At least five Indians were killed by miners from 1990 to 1992. One such killing occurred on 12 January 1991. Eighteen-year-old Claudemilson Jose Laim Macuxí was reportedly shot dead by a miner in the village of Caraparu II. Two armed miners had entered the village bringing several bottles of alcohol — which it is illegal to distribute in indigenous areas. When an argument ensued about the alcohol, the miners shot Claudemilson Jose Laim Maxuci. FUNAI requested federal police to investigate but the investigation has made little progress.

In June 1991 the Federal Prosecution Service, Procuradoria Geral da Republica sought the removal of miners from the Macuxí area. Federal police took some action, such as preventing miners from entering the area by blocking roads. However, they allegedly made no attempt to remove any of the miners already inside the area. In September 1991 a judicial order suspended the June injunction. Thus the area became totally unprotected until May 1992 when court proceedings to remove the miners were again initiated by FUNAI and the Federal Prosecution Service. According to the all-Indian Indigenous Council of Roraima there are some 30,000 miners inside the Raposa/Serra do Sol Indigenous Area. They believe this is the cause of the increase in violence inside the indigenous area. The Macuxí are less well known than other indigenous groups in Brazil and their situation, described by the Catholic Church's Missionary Council, CIMI, as the most dramatic of all Indian groups in 1991, has gone unnoticed internationally.

`Our children are dying...': the Pataxó-hã-hã-hãe

“Our children are dying from lack of medicine. Our leaders cannot go into the town, because they are threatened by gunmen. FUNAI itself threatens us in every way possible.... The FUNAI representative in Eunapolis receives me with a gun on the table to intimidate me.... FUNAI doesn't want us to claim our rights.... It's like living as a prisoner.”

This description of the plight of the Pataxó-hã-hã-hãe Indians was given by Manoel (Tuya) Pataxó-hã-hã-hãe, a community leader interviewed by Amnesty International in June 1991. Since 1982 hundreds of Pataxó-hã-hã-hãe Indians have been living in a state of siege on a reserve in the south east state of Bahia. At least eight Indians have been killed and over 30 wounded during the past decade; they have been repeatedly ambushed, abducted, arrested and beaten. Their homes have been raided and their leaders threatened. Police inquiries and judicial proceedings have reportedly halted in all cases of violent deaths of Pataxó-hã-hã-hãe Indians. The federal authorities appear to have taken no extra measures to protect them. Usually their assailants have been gunmen hired by claimants to the land the Indians occupy. These gunmen operate with near impunity. Military police responsible for carrying out land evictions have reportedly beaten and tortured members of the Pataxó-hã-hã-hãe. After a military police raid on the Pataxó-hã-hã-hãe community in 1985, 20 Indians, including five pregnant women, needed medical treatment for their injuries. Eye-witnesses reported that local gunmen dressed in military police uniforms also participated in the police raid.

The background to these events is complex. The Indians belong to a group of 2,000 who decided in 1982 to return to their traditional lands on the Paraguaçu-Caramaru Reserve. The reserve lies in the municipalities of Itaju do Colonia, Pau-Brasil and Camaca in south Bahia, and was formally designated in 1926. From 1936 onwards, ranchers and landowners began to illegally occupy parts of the Paraguaçu-Caramaru Reserve. Pressure increased on the Bahia state government to seize the Indian lands and expel the Pataxó-hã-hã-hãe from the area. Some ranchers were given title deeds to the land they had occupied by the Bahia state government. As the ranchers encroached, increasing numbers of Indians left their homes and sought refuge in reserves far from their traditional lands. Those who remained subsisted by labouring for ranchers.

Since 1982, when they returned to the Paraguaçu-Caramaru reserve to reclaim lost land, the Indians have been targets of a reign of terror. Local state and judicial authorities have offered them no protection. In 1988 FUNAI withdrew the medical facilities it had made available to the Indians. The gunmen who pose the most immediate threat to their survival appear to have a close relationship with the local police. The landowners who employ the gunmen have equally close links to, and are sometimes part of the local authority.

A legal case to determine ownership of the land has been running in the federal courts since 1982. The case is still in the first

of three stages it must complete. The Pataxó-hã-hã-hãe areas are not included on the list of 144 areas scheduled by FUNAI for inspection and demarcation by 1993. The Pataxó-hã-hã-hãe face powerful opposition to their land claims. The present Governor of Bahia is the person who granted most of the land titles of Pataxó-hã-hã-hãe land to landowners during an earlier administration.

The increasingly violent attacks on the Indians have gone unpunished. In March 1988 a 21-year-old Indian youth, Djalma Lima Souza Pataxó-hã-hã-hãe, was abducted and killed by gunmen. His corpse bore signs of torture and mutilation: he had been castrated and scalped and his fingernails and some of his teeth had been pulled out.

The timing of this killing was significant as it occurred one week before the Indian community was due to enter final negotiations to settle their dispute with a local landowner. Some of the Indians believe that Djalma Lima Souza was mistaken for one of their community's leaders and killed in order to intimidate them.

It was six months before the first steps in the police inquiry were taken. That was the time it took to resolve a dispute over whether Djalma Lima Souza was an Indian in order to determine whether his killing should be investigated by state or federal police. Federal police were eventually assigned to the case but four years later they have yet to interview the landowner believed to have hired the gunmen. Another key suspect has absconded, but the police have apparently made no effort to trace him. With the police inquiry still to be completed, the case has effectively stalled.

Nine months after Djalma Lima Souza was killed a Pataxó-hã-hã-hãe leader was stabbed to death. João Cravim had repeatedly notified the authorities that he was receiving death threats, and had sought protection from local FUNAI office shortly before his killing, on 16 December 1988. The man who killed him was lynched by members of João's community. The inquiry into this case has also stalled. In May 1990 Pataxó-hã-hã-hãe leader Nailton Muniz survived the second attempt on his life. He was stabbed by an Indian employed in the local FUNAI post. The same man had allegedly tried to shoot him in 1989. Nailton Muniz attributed the latest attempt on his life to the fact that he had publicly criticized FUNAI for failing to protect his community. There was no inquiry into this incident.

A series of uninvestigated death threats, assaults and ambushes has so intimidated the Indians that they dare only make the briefest of visits to the town. Repeated appeals on their behalf by church lawyers and others have fallen on deaf ears.

`He left alive ...': the Truka

An entire community in the Truka Indigenous Area on the island of Nossa Senhora da Assunção in Pernambuco state have lived in fear since the day a death squad broke into an Indian family's home and abducted and killed the eldest son, Antonio Gilvan da Cruz.

In the morning of 28 November 1990, a group of eight armed men in civilian clothes, claiming to be federal police officers, arrived at the family's house. When they were refused entrance, the men opened fire and forced their way into the house. According to Antonio Gilvan's mother, "They tied up Antonio and grabbed my youngest son. I started crying and saying that he was only a minor, that he wasn't old enough to be taken away, and hadn't done anything. He hung onto me and started crying, so they said they'd only take Antonio to make a statement. They left with him, tied up like a criminal.... he left alive." The gunmen also took away all the family's papers relating to their ownership of land.

That was the last time Antonio Gilvan's family saw him alive. His body was found dumped by a roadside, a few hours later. He had been savagely mutilated: castrated, burned with cigarettes, had his teeth and finger nails pulled out and an arm and a leg broken. He had also been shot in the chest. Antonio Gilvan was only 22 years old.

It is impossible to know which of his terrible injuries finally killed him because no post-mortem was conducted on his body. Nor was any attempt made to investigate the case for a full three weeks. The local state police merely collected the corpse; they made no inquiries nor did they notify FUNAI or the federal police. Members of the community then contacted an independent organization in Brasília, the capital, which in turn alerted FUNAI and the federal police in Recife, Pernambuco's state capital.

The federal police made a one-day visit to the scene, on 18 December 1990. The result of their inquiry was issued some two months later, on 28 February. They concluded that it was impossible to determine who was responsible for killing Antonio Gilvan, because witnesses were unable to identify the assailants. Antonio Gilvan's family, who believed that the abduction had been in part a police operation, had in fact asked to see a line up of local civil police personnel from the three municipalities of Cabrobó, Ibo and neighbouring Belem do São Francisco, to see if they could identify any of those they had seen carry out the abduction. Their request was denied. In March the state public prosecution service called for further investigations by the Federal Police and in May another investigating team went to the area. The case has now been passed to the federal courts.

The Truka community suspected that a landowner with whom they were in dispute was also involved in the killing. This landowner is a former state and federal congress man. The land he owns borders another estate inside the Truka indigenous area, owned by the local police chief. The landowner with whom the Truka are in dispute had fenced off his property and enclosed an area claimed by the Truka and blocking the public road which leads to the river, with high gates and an armed guard. In July 1990 the gates were burned down, probably by some of the Indians. The landowner then entered the indigenous area on two occasions, accompanied by civil and military police, to seek out the son of the community's political leader, and Antonio Gilvan da Cruz, whom he claimed were responsible for the incident. They had no official authorization to do so.

In August 1990 the community had sent a delegation of four to seek support from the FUNAI headquarters in Brasília. They explained that they had received death threats and that the local FUNAI office seemed unwilling or unable to assist them. They returned with an order signed by the President of FUNAI, banning outsiders from entering the indigenous territory, without explicit FUNAI permission. The Truka presented the order to the local FUNAI post, the civil police and a local judge, but it appears that no action was taken by these authorities to enforce the order or to guarantee the security of the community.

The effect of the killing was to terrorize the Truka community. Fears for their leaders grew following rumours that a "death list" was circulating. The Regional Superintendent of Federal Police in Recife is reported to have said that the landowner suspected by the community of commissioning the killing is known to have returned to the area, but that the man is too violent and dangerous for the police to attempt to arrest him.

2 Human rights sacrificed on the altar of expansion

Central to debate over Indian rights, and a source of violent conflict is the issue of access to and exploitation of timber, mineral and other resources on Indian lands. The Brazilian rainforest with its vast wealth of natural resources has for decades attracted settlers, miners, and commercial interests. Indians living in areas rich in timber and mineral resources or areas which are of strategic or economic importance, have been the target of violent attacks designed to intimidate them or to force them to leave their traditional land. The building of roads, hydro-electric and other economically strategic projects on Indian lands has also led to conflict.

The human cost of this was acknowledged by the present government in "Indigenous Brazil", a report issued at the United Nations (UN) Conference on Environment and Development held in Rio de Janeiro in June 1992.

"Towards the end of the 1960s and all through the 1970s, the development policy at the time — aimed especially at incorporating new economic frontiers to the productive process — violently hurt many Indian groups.

"Invasion of Indian lands began with colonization of the American Continent and persists even today. Either because of the natural resources that exist on their lands — as is the situation of the Yanomami, Nambikwara and Kayapó — or because the frontiers of the economy are expanding into their areas — as was the case of the Parakana and Arara — Indians continue to pay a high price for the expansion of Brazilian society."

The Amazon region

For many decades the policy of successive Brazilian governments was to integrate Brazil's indigenous peoples into the mainstream of society while developing the country's economic potential, allegedly to the benefit of the total population. In

theory the Indians removed from their traditional lands would share in the economic rewards of the country's development. But in reality untold numbers of Indians were killed, their communities were decimated, and their cultural identity undermined.

In the 1970s the then military government began a major program to develop the Amazon region through the National Integration Plan, an official colonization scheme. The plan resulted in the removal of Indians from their traditional lands to make way for roads to be built and to provide land for the settlers who arrived in their thousands. The National Integration Plan had a disastrous effect on the Yanomami Indians of south west Roraima. The Yanomami, who are officially estimated to number over 9,000, live in the forest on the border with Venezuela and, as a result of their isolation, are the largest of Brazil's tribal groups to have maintained their traditional way of life. In 1973 work was started on the construction of the Northern Perimeter Road (BR 210), part of the National Integration Plan. The road was never completed but it brought hundreds of men and machines into the Indian area. Many Indians died from infectious diseases to which they had no immunity or were poisoned by chemicals released into the rivers. Several were killed by armed miners, and settlers, crimes which were tacitly placed beyond the law since the authorities made little effort to investigate or punish them.

The late 1980s saw a resurgence of the threat to the indigenous groups of the Amazon, this time as a result of a national security project. In 1985 the National Security Council revealed plans to create a military-ecological buffer zone along Brazil's north and west borders. The project, known as *Calha Norte* (Northern Headwaters), involved extending military posts and installations in a 150 kilometre wide strip of land along the Brazil's 6,500 kilometre border with Colombia, Venezuela, Guyana, Suriname and Guiana. These areas were to be colonized by settlers as a means of securing the frontier. Extensive publicity was given to the gold and castorite reserves available in Yanomami territory, which stimulated the migration of thousands of prospectors to the area. Although mining on Indian lands was still illegal, there were many reports of collusion of police and military officers in mining activities on Yanomami land.

The *Calha Norte* project affected the traditional lands of some of the Brazil's largest indigenous communities — the 18,000 Tukano of the upper Rio Negro region, the Ticuna and the Yanomami. Military delegates joined the inter-ministerial working group responsible for the demarcation of Indian lands. In 1988 Yanomami and Tukano lands were separated into a series of colonies, 19 in the case of the Yanomami, separated from each other by areas designated as "National Forest" in which mining and logging were permitted. In both cases the land the Indians were assigned was significantly less than the area they claimed — only 29 per cent of Tukano land, for example. These arrangements were eventually overturned by the Collor administration, largely as a result of international protests which focused in particular on the plight of the Yanomami. In November 1991 the government announced that it was setting aside 23 million acres of land for the Yanomami and the area was fully demarcated in May 1992. The Tukano's land claims have also been accepted and their area has been delimited, but formal demarcation stalled. By the time these measures were taken Indian communities had suffered a devastating onslaught of disease and violence, in particular the Yanomami.

The Yanomami

Attacks on the Yanomami first reached public notice in August 1987, following an influx of miners into the Succurus area. A conflict over a mine in the Paa-piu area, on Yanomami traditional land, led to the deaths of four Indians and two miners. As far as the interpreters could ascertain, the conflict arose when a group of Yanomami, including women and children, had gone to the mine, which they had themselves previously been working, to disarm a group of miners who had taken possession of it. Federal police did identify and bring charges against four miners held responsible. In February 1991 FUNAI officials were called to give evidence in the early stages of pre-trial proceedings. None of the accused have ever been arrested.

Immediately after the incident, FUNAI issued an edict prohibiting the entry of missionaries and anthropologists into indigenous areas in Roraima. The Catrimani mission, which had been providing health services to Yanomami Indians in the region for some 20 years, and the health post of the Commission for the Creation of a Yanomami Park, CCPY, were closed down. Restrictions on access to the area made it difficult to obtain information on attacks on Yanomami by miners. The problem is compounded by the fact that the vast majority of the Yanomami do not speak Portuguese and have no experience of contact with the Brazilian police and judicial system. By cultural tradition the Yanomami will not divulge the names of their dead to strangers. Thus the true number of Yanomami deaths is unknown, although some 16 killings between 1984 and 1992 are the subject of police inquiries.

During 1988 the influx of miners in the Indian areas increased dramatically and with it reports of violent attacks on Yanomami Indians. In May 1988 a Yanomami man from the Hakomatheri group, who live near the Venezuelan border, was brought by FUNAI to the hospital in Boa Vista with a serious gunshot wound. He and a group of Indians had been attacked by armed miners. The man's two-year-old daughter had died in his arms from her wounds and two other Indians were reportedly seriously wounded. According to the CCPY, who monitored a radio message from the FUNAI indigenous post in the area, the Indians' hands and feet were tied and they were beaten and kicked by the miners. After opening a brief inquiry, Federal Police recommended closing the case. The prosecution service recommended continued investigation, but no further progress has been reported.

There no conclusions either to an inquiry into the grave wounding of a 13 year old Yanomami boy, shot out of a tree by a *garimpeiro* on 3 November 1988 near the Paa-piu village. According to the boy the *garimpeiro* called him a 'monkey' and shot at him as if he were animal.

In early June 1989 a Yanomami Indian was shot dead by heavily armed miners in an Indian village near the headwaters of the Orinoco and Mucajai rivers in the Xidea region of Roraima. The killing was witnessed by other Yanomamis who managed to flee, and was later reported to the federal police in Bõa Vista.

On 11 August 1989 two Yanomami women and a child were shot dead by a group of miners near a prohibited airstrip, the DOCEGEO air-strip, after they had challenged the miners' right to be there. According to reports, other Yanomami Indians had difficulty in retrieving the bodies for funeral rites, as the miners had mounted an armed guard at the site of the killings.

On 6 September 1990 Lourenço Yekuana, the 65-year-old leader of the Yekuana, a sub-group of the Yanomami, in Auaris, and his son Albert Konaaka, aged 25, were killed in a conflict with miners. Auaris is close to the Venezuelan border in the Paríma mountain range of northern Roraima state. Lourenço Yekuana was a particularly important local leader who had managed to unite the Maingong and Saluma communities, two previously hostile indigenous groups.

On 6 September some 10 armed miners arrived at Holomai village. While five reportedly hid in the bushes, another five entered the village and asked for Lourenço Yekuana and his son. When the Indians went to talk to them, a miner fired three shots at point blank range at Lourenço Yekuana, killing him instantly. Alberto Konaaka was injured in the arm, but managed to get back to his hut and retrieve his rifle. He started firing at miners and was fatally wounded by them. Other Yanomami villagers then reportedly attacked the miners with bows and arrows, killing three of them, and eventually drove them away, but not before several other villagers had been wounded. Lourenço Yekuana's brother-in-law, Waxi Saluma, who was on a visit from the nearby Saluma village, was shot in the abdomen, face and head.

A federal police investigation was opened. The Attorney General took the step of suggesting the application of the "Law against Genocide", which carries a sentence of between 12 and 30 years for those responsible for Indian genocide. The Attorney General stated to the press that FUNAI itself might be incriminated for permitting a situation of genocide of the Yanomami. "The Prosecutor's Office will do its utmost to ensure that the authors are punished in accordance with laws currently in force". The police investigation concluded by seeking charges of homicide against 10 individuals, identified by other miners in Bõa Vista as having participated in the attack. However, none of the 10 accused were arrested in connection with the killings.

In December 1990 Maingong Indians visiting Boa Vista complained that the leader of the group of miners allegedly involved in the shootings at Holomai, personally threatened a Maingong Indian with a gun saying: "You Indians are like dogs, to be killed". The federal police were called and detained the man, but he was released after a brief spell in custody.

An Amnesty International delegate who visited the Saluma village in January 1991 found Waxi Saluma to be in a particularly poor state of health. He explained that he had been treated at the Casa do Indio in Boa Vista to remove gunshot pellets from his jaw, but others remained lodged in his head, arms, abdomen and back. Waxi Saluma spoke of his great distress at still having gunshot pellets lodged in his body. He had not left his hammock since he returned to the village in November 1990.

In November 1991 President Collor signed the decree demarcating the whole 9.6 million hectares claimed by the Brazilian Yanomami and this area was physically demarcated by May 1992. There are however continued reports of invasions into the Yanomami area, including Auaris area, and there is concern about FUNAI's capacity to maintain the area free from incursions.

On 19 February 1992 25 year-old Yaduce Yanomami was shot dead by a group of 19 *garimpeiros* near the village of Paa-piu, after which Yanomami from the village chased after the *garimpeiros* and killed two of them. State and non-governmental agencies are now trying to implement health and ecological programs to restore full health to the Yanomami. It is estimated between 1988 and 1990 some 1,500 Yanomami, approximately 20 per cent of the population, died of malaria brought into the region by *garimpeiros*.

The northwest

In 1981 the Brazilian government established POLONOROESTE, the North Western Development Pole project, an integrated rural development program for the western Amazon, which was largely financed by the World Bank. The core of the project was to pave the 1,500 kilometre road (the BR 364) which links the state capitals of Mato Grosso and Rondônia, and thereby enable the development of an economic infrastructure. The project was intended to mitigate the effects of disordered colonization and settlement in the area, which had tended in the past to lead to violent conflicts between settlers and Indians. It also included components for the protection of the environment and the Amerindian population. Some \$26 million of the project's funds were specifically designated by the World Bank for the demarcation of indigenous areas affected by POLONOROESTE.

The POLONOROESTE project had a dramatic effect on the lives and livelihoods of groups of Indians within the state boundaries of Mato Grosso and Rondônia, several of whom had no contact with non-indigenous society. The advance of POLONOROESTE was matched by an increase in reported human rights abuses against Indians, but not by an increased effort to prevent such abuses. Despite the specific allocation of funds for demarcation, it was some five years after the project began before any indigenous areas were demarcated. By then isolated groups of Indians had experienced their first, often hostile and violent, contacts with the settler world. Some demarcations were carried out in 1986 after the World Bank had temporarily suspended its funding for POLONOROESTE on the grounds that provisions for environmental and Amerindian protection were not being respected by the Brazilian authorities.

Not only did Indian groups receive little official protection from the activities of timber and mining companies encamped on their traditional lands, and frequently responsible for violent attacks and sometimes the massacre of whole villages. The destruction of their habitat by removing the forest on which they depended for food and resources, and the pollution of rivers by use of mercury in mining techniques, made these groups ever more dependent on the surrounding society.

State agencies played an ambiguous role in directly encouraging and financing economic activity in indigenous areas. Indians were encouraged to sell their timber and enter into disadvantageous contracts with logging companies. Extraction of timber and mineral from indigenous areas is illegal unless the contracts are made with the federal authorities. Even in the demarcated areas no action was taken to stop illegal logging and mining. In 1987 elections local politicians in Rondônia state were offering their supporters land inside the recently demarcated Zoró indigenous area.

Often contracts for timber felling were negotiated directly by FUNAI. In January 1989 the Federal Attorney General's Office began proceedings against the former President of FUNAI and the FUNAI Regional Superintendent for Mato Grosso, Rondônia and Mato Grosso do Sul, for having stimulated and approved a series of contracts for the extraction of timber from indigenous areas. Two years earlier the Presidency of FUNAI had developed a policy of encouraging Indian groups to sell timber within their areas. The economic necessity to do so was stimulated by withdrawal of health care and other material assistance. Ibadai Suruí, one of the leaders of the Suruí Indians in Rondônia, gave the following account of this policy in practice: "FUNAI has frequently pressured me to allow loggers and miners into our area. Every time that I go to the FUNAI office to talk about the health problems of our people, they tell me that we have to sell timber like the Cinta Larga [a neighbouring indigenous group]." According to a senior FUNAI official interviewed by Amnesty International in 1991: "The government organ FUNAI is used as an instrument of occupation of these areas — a kind of wedge to make the occupation of these areas possible"

A 1990 World Bank evaluation of the POLONOROESTE project concluded that there had been: "a serious overestimation of the Borrower's institutional capabilities and, more importantly, its political commitment to the objectives of environmental and Amerindian protection". It complained of "persistent failure to comply with contractual obligations concerning Amerindian and environmental protection".

`A clear purpose to kill': the Suruí

In March 1986 the lands of the Zoró Indians were demarcated. By then, however, hundreds of colonists had settled on the Zoró lands. The Zoró were first officially contacted by FUNAI in 1978. Three years earlier FUNAI had issued a certificate stating that there were no indigenous groups in the area to a development company which wanted to build a road through Zoró land.

Following demarcation, assurances were given to both Indians and colonists that the colonists would be removed from the Zoró area, compensated and given alternative land, using World Bank funds specifically allocated for this purpose. However, despite repeated protests by the Zoró, nothing was done to remove the colonists until 1988, two years after demarcation and then only after violent conflict had drawn attention to the area. There are said to have been some 1,000 Zoró Indians in 1978; by 1988 their numbers had been reduced to 450.

In October 1988 the Suruí, Cinta Larga, Gavião and Arara indigenous groups, whose lands bordered on the Zoró area, became concerned at rumours that the Zoró had been persuaded to sell their lands to the colonists, and that the number of colonists in Zoró lands had almost doubled in the past year. They considered this to be a threat not only to the Zoró, but also to their own survival. They decided to organize an expedition into Zoró territory to persuade the Zoró not to give up their land. Some 170 Indians from the five groups entered the Zoró area, many of them armed.

The Indians saw at first-hand the level of non-indigenous settlement when they reached the area of Paraiso da Serra. "You couldn't count how many invaders there were — many estates, miners, loggers", said Iabadai Suruí, who had joined the expedition. The settlers apparently told the Indians that they would never succeed in removing them from the area and that "We will finish off the Indians". The Indians retaliated by capturing some of the settlers, stripping them, tying them up and hitting them. Although some of the Indians wanted to kill the settlers, the Zoró intervened and prevented further violence. The Indians then released their captives and returned towards their own villages by foot in different groups.

The Indians were pursued by some 15 armed settlers in two jeeps, later described by the federal prosecutor as a "caravan of death". They opened fire on the first group of Indians they saw, who fled into the forest. The next group of Indians they encountered also managed to escape. Further down the road the men came across Yaminer Suruí, an elder Suruí leader, who was returning alone to his village. This defenceless old man was shot dead by the settlers, an act which the federal prosecutor described as "symbolising the clear purpose of the group to kill any Indians that they found on their way". His body was then quartered and burned.

It was some two days before the rest of the Suruí returned to their villages and discovered that Yaminer Suruí was missing. They then asked FUNAI to enter the Zoró area to look for him, but their requests were refused. It was only when a member of the armed party, who alleged that he had been forced against his will to participate in the killing, came forward and gave a statement to police about the killing, identified those involved and indicated where Yaminer Suruí's body could be found, that FUNAI and the federal police agreed to enter the Zoró area.

The case was investigated by federal police. Although the police inquiry was relatively prompt and efficient, the case has failed to proceed. Four of those identified to the police as implicated in the attack were arrested and questioned. They submitted a *habeas corpus* petition but were released by a local judge before their petition was heard. Two of them are reported to have returned to the area of conflict in Rondônia, contrary to the terms of their conditional release. The first hearing of the witnesses for the prosecution was set for three years later on 15 November 1991. With considerable difficulty the Indian witnesses travelled to the hearing, but it was cancelled at the last minute. Since then the case has made no progress.

A legacy of failure: the Uru-eu-wau-wau

The Uru-eu-wau-wau Indians are a nomadic hunter-gatherer people, who range over the centre south of Rondônia state. Their presence was not officially registered until 1981. They are believed to form five sub-groups, of which only three have been contacted by FUNAI. For years their unprotected status meant that no official attempt was made to prevent or mediate in conflicts between the settlers and the Indians, conflicts for which the Indians were ill-prepared. Because they have aggressively defended their territory several "punitive" expeditions have been carried out against them since the 1950s, when settlers and landowners began to move onto their areas. In 1963 workers on the São Tomé rubber estate, led by the estate

owner, massacred 31 Indians — children were reportedly thrown in the air and impaled on knives as they fell — and abducted another 28, most of them women and children. The estate owner was charged with “genocide” but the case against him is still running in the local court, almost 30 years after the massacre. He is now over 70 years old. Even if convicted he will not have to face a custodial sentence and he has retained the land for which he killed. The rubber estate could have been officially confiscated because it was on indigenous land but instead the estate workers were given official protection and the surviving Indians were removed from the vicinity. The area was excluded from Pakas Novas Park, the zone demarcated for the Uru-eu-wau-wau in 1986.

Between 1981, when they were first contacted by FUNAI, and 1991 the Uru-eu-wau-wau population is estimated to have been reduced by half as a result of disease and violence. A legacy of failure to protect the Uru-eu-wau-wau Indians was concluded in January 1990, when outgoing President Sarney revoked the demarcation of Pakas Novas Park. It was the first time that a demarcation had been rescinded and it threw into question the security of all demarcated indigenous areas.

The immediate result of this was an influx of miners and settlers into Pakas Novas Park, although this was technically still illegal. The invasion was encouraged by local state politicians who publicly declared that the Indian reserve was open for exploration. By August 1990 there was evidence of a dramatic increase in the level of timber and mineral extraction in Indian areas. There were also reports of violent clashes between Indians and settlers. The Uru-eu-wau-wau area was demarcated again in November 1991 by the Collor Government. However, miners and settlers reportedly continued to invade the indigenous area and further conflicts between them and the Indians have been reported.

Isolated Indians

Isolated indigenous groups — those which have little or no contact with the rest of society are particularly vulnerable to human rights violations. With no previous contact with non-indigenous society, these groups are unable to make representations to the central authorities concerning their land and other claims — they speak no Portuguese and have no understanding of legal or other social and political mechanisms of the surrounding society. FUNAI, the government's official guardian of such groups, is charged with the responsibility for their physical protection and for guaranteeing their inalienable land rights. FUNAI's Isolated Indians Sector believes that there to are 75 such groups still in Brazil.

Legal mechanisms for the protection of isolated indigenous groups have long existed, though FUNAI has been criticized for being slow to use them and dilatory in their enforcement. As soon as the presence of an Indian group is formally acknowledged by FUNAI, FUNAI may start proceedings to put an injunction on the land over which they roam and suspend other claims to that land. The definition of the area to be protected is made on the basis of an anthropological analysis. Other factors such as political pressure from local interests, or military considerations have also been influential in determining whether FUNAI takes and enforces such protective action. It is not difficult to see the strong incentive for claimant landowners, timber or mining companies to destroy all evidence of Indian habitation in areas claimed, including the physical elimination of Indians found in these areas. This allegedly occurred in 1985 with a group of un-contacted Indians in the Igarapé Omore, south eastern Rondônia.

‘Threatened with extinction’: Indians in the Igarapé Omore

Sightings of uncontacted Indians in the Igarapé Omore, believed to be a sub-group of the Nambiquara do Norte, had been reported to FUNAI since 1976, but no steps had been taken to put an injunction on the area or prevent the government's land colonization agency, INCRA, from granting land titles there. The land on which the Indians were sighted was part of a large estate, the Fazenda Ivipita. Warrants had already been issued for the arrest of the estate owner, manager and some of the workers in connection with the killing of five prospectors on the estate in 1983, but never implemented.

In September 1985 FUNAI received reports of an attack on an Indian settlement on the estate, the destruction of Indian agricultural plots and the wounding of a tractor-driver by an Indian arrow. An expedition later that month found several traces of Indian habitation and of the destruction of Indian shelters and agricultural plots. During a further expedition in November, FUNAI received testimony from an Indian of a related group that she had recently been visited by three Indians from an uncontacted group who told her that they were fleeing from the area where they had been attacked by estate workers and an unspecified number of their group killed and their shelters destroyed by tractors. Whole areas inspected in September had by November been driven over by tractor and traces of indigenous settlement further destroyed.

In December a worker who escaped from forced labour on the estate gave a statement that less than a month before the FUNAI visit, two Indians who were harvesting manioc from their plots had been killed by one of the estate managers. He alleged that bodies were first buried, and then dug up and thrown in the river Omere. According to the worker's statement the estate manager had received prior notice of the FUNAI inspection and ordered estate workers to block paths leading to the Indian settlements and plots. The same month, expedition members were threatened by the estate manager who was coordinating rapid deforestation in the area. The expedition members had to leave but recommended that a federal police inquiry should be opened, an immediate injunction put on the area, and all deforestation halted.

In April 1986 a federal appeals court placed an injunction on the area: "to preserve a group of isolated Indians, probably Nambiquara do Norte, a small surviving population which is threatened with extinction after having suffered constant attacks in recent months, in which agricultural plots, ... and hunting encampments were destroyed. Spent cartridges and destroyed bows, arrows, and clubs were found in the areas of probable violent conflict, as proof of these attacks". In response to an appeal by the owner of the Ivipita estate a local judge suspended the injunction, but his ruling was overturned by the federal appeals court the following month. In doing so, the referred once more to: "the imminent possibility of the physical annihilation of the remaining tribal population of Nambiquaras do Norte"

In June 1986 an investigatory expedition sent by the President of FUNAI to the estate did nothing to prevent continued large-scale deforestation although this would have directly threatened the habitat and survival of the Indian group and jeopardised investigation into the location and fate of remaining members of the tribe. Forty thousand hectares had been felled since 1985 - all traces of Indian presence since the first inspection in 1985 had reportedly been destroyed by tractor. On the basis of a report stating that no traces of Indian habitation had been found, the FUNAI President sought and gained the suspension of the injunction and the area was liberated for further deforestation in November 1986. The impunity for the killings and large-scale deforestation in the Omere area is likely to have jeopardized the survival of any remaining members of this indigenous group.

`Just like us': the Korubu

The Korubu Indians are one of six groups of isolated Indians living in the Javari Valley of Amazonas state in northwest Brazil. Known as the `*Caceteiros*' (clubbers), for their use of long clubs, they are much feared by the non-indigenous population, though rarely seen by them. However between July and September they descend from the forest to collect turtle eggs, spawned on the shores of rivers crossing the region.

Uncontrolled commercial logging and fishing in the area of the Korubus has disturbed the Korubus' habitat, and provoked reprisals by them against settlers. A 1985 FUNAI injunction forbidding members of the non-indigenous population from entering the area has not been enforced. FUNAI's national coordinator for isolated groups explained to Amnesty International in June 1991 that control of entry into the area could be simply carried out by mounting watch posts on rivers giving access to the region. As early as 1987 local FUNAI staff warned, in a report to their regional headquarters, that the Korubus were in danger from the non-indigenous population and called for protective measures to be authorized: "If FUNAI doesn't take energetic measures, it is possible to foresee the unleashing of a war against the Indians, which would be a catastrophe, bearing in mind that they are not in any way prepared to meet this threat".

In September 1989 three Korubu Indians were ambushed and killed on the banks of the Itui River by settlers. According to testimonies given to the police, four Korubus had appeared on the outskirts of the settlement known as Gamboa the previous evening and watched a football game being played by some of the settlers. According to testimony later taken in a police inquiry into the killings, the villagers became frightened at the approach of the Korubus and called a meeting to decide what to do. They were joined by several fishermen from Benjamin Constant who had arrived at the clearing, the fishermen allegedly urged them to mount a hunting party. According to the testimony of the participants, the fishermen and villagers ambushed three of the Indians the next day and killed them. The fishermen took two clubs belonging to the Indians back to Benjamin Constant and presented them to a local town councillor. The villagers then reportedly buried the Indians in the bank of the river.

The killings might never have reached the public were it not for the actions of a local priest, Father Joseney Lira. After hearing rumours that three Indians had been killed he visited Gamboa the following month, was told of the incident by settlers, and

informed the press. As a result of the publicity the Attorney General ordered the federal police to investigate the case. Local FUNAI staff had apparently known of the incident but had taken no action on the grounds that it was impossible to investigate such cases. A town councillor from Benjamin Constant also knew of the incident, having been presented with clubs belong to the murdered Indians, but did nothing.

Some two months after the killings federal police officers retrieved the bodies of the three Indians, which had been buried in the river bank. They then took testimonies from settlers, some of whom had been directly involved in the killings. Some of those interviewed had expressed surprise to find that their Indian victims were “just like us”. The federal police inquiry was completed in July 1990 and recommended charging six people with the killings. However the inquiry concluded that the killings were accidental, directly contradicting the statements given by those allegedly responsible. They had described holding a meeting at which they decided to form a “hunting party” to track and kill the Indians.

In a further unexplained development, the case was passed to the jurisdiction of the state courts. The killings had actually occurred with a recognized Indian area and theoretically therefore fell within federal jurisdiction. It was more than six months before the local state prosecutor filed charges against the accused. Under Brazilian penal procedures the prosecutor should present the charges around five days after receiving the police report. The case apparently collapsed in June 1991, when the court suspended proceedings indefinitely, claiming it did not have the resources to summon the accused for trial. A decision on whether the case should be transferred to federal jurisdiction is now pending in the Higher Appeals Court.

Given the prevailing atmosphere of impunity for killings Indians in the Benjamin Constant area, Amnesty International was concerned at reports of clashes between Korubu Indians and employees of AGROPLAN, a food processing company, inside the Javari Valley Indian Area in September 1991. The company was apparently given permission to explore the area by the federal government's environmental agency IBAMA. Under Brazilian procedures to protect indigenous populations, such permission would normally require prior clearance with FUNAI and a FUNAI certificate declaring that there were no Indians present in the area. A FUNAI expedition to the area in mid-August 1991 reported that it had failed to locate any Korubus.

This area has also been reportedly invaded by heavily armed loggers. Many FUNAI personnel were withdrawn from the area following government spending cuts in 1990. Amnesty International was informed in January 1991 that timber merchants had interpreted the removal of FUNAI staff as a signal of the Federal Government's reduced commitment to the protection of indigenous groups and as a green light for invasion of Indians areas for illegal timber extraction and, in effect, an “open season” on Indians. It has been reported that timber merchants have their workers to kill Indians encountered on logging raids — “If an Indian appears, kill it”. In September 1992 a federal police operation was mounted to remove loggers from the area. An injunction by a local judge banning the operation was overturned. However, after the operation federal police alleged lack of resources to man a permanent control post to prevent renewed invasion of the valley.

‘The fronts of so-called civilization’: the Guapore reserve

FUNAI employees attempting to locate and identify, and thereby protect, isolated Indians have been threatened with death. In September 1990 Antenor Vaz, a FUNAI staff member working in the Guapore Biological Reserve in Rondônia State, was informed that a gunmen had been hired to kill him. He was part of a FUNAI team trying to local an isolated group of Indians believed to live on the reserve, which lies on the border with Bolivia.

The survival of the uncontacted Indians on the Guapore reserve is threatened by extensive logging carried out illegally on the reserve by timber companies. The Indians have resorted to placing sharpened sticks in the mud to pierce lorry tyres, as their only means of protest and defence against the onslaught on their environment. In August 1989 an official report warned: “It is not difficult to imagine that there may have been violence between these fronts of so-called civilization and the Indians. Last year (1988) there were unconfirmed reports of the killing of more than 20 isolated Indians near the ‘Coronoel’ estate, located between Indigenous Area Rio Branco and the Guapore Biological Reserve. Rumour has it that loggers have also killed Indians in the Biological Reserve in previous years”.

The federal environmental agency IBAMA, is responsible for protecting the reserve. IBAMA has long been aware of the timber companies' illegal invasion of the reserve. However, it appears to have done little to stop them. Instead, FUNAI staff and members of the independent ecological group ECOPORE who have reported illegal logging on the reserve have received death threats from timber merchants. IBAMA inspections of the reserve have been sporadic and it is alleged that timber

companies have been told of them in advance.

The threat to Antenor Vaz's life was widely reported. In the wake of the publicity, FUNAI and IBAMA authorities visited the area and offered greater resources to the team trying to locate the Indians. However, there was no investigation into the source of the death threat, and Antenor Vaz went into hiding in fear for his life. Other FUNAI staff working in the Vale do Guapore area now face a similar situation, in which their very work in defence of Indian groups is hampered by lack of federal police support or investigation of death threats made against them.

3 Why the abuses continue

In theory, there is extensive scope to protect Brazil's Indians from human rights abuse. International experts regard provisions in Brazil's 1988 Constitution, recognizing indigenous social and cultural traditions and upholding Indian land rights, to be among the most advanced in the world. The constitution also includes provisions which should offer the Indians greater protection from the effects of development projects. In future, mining concessions and hydro-electric constructions on Indian lands must now be authorized by Congress and the views of Indians affected by such projects will have to be heard. Similarly the constitution stipulates that Congress must be consulted about the removal of Indians from their land in cases of catastrophe and emergency, or for national security reasons.

Indians are given special protection in law. In recognition of the likely hostility between local economic interests and indigenous interests the implementation of indigenous policy has traditionally been a federal responsibility. All litigation arising from matters of ownership of indigenous areas falls within the competence of federal courts. Crimes covered by the Penal Code, such as homicide, when Indians have been killed inside officially recognized indigenous areas in the context of disputes over indigenous land fall under federal jurisdiction. However, when killings occur outside an indigenous area, or in situations not considered to relate to land disputes, the cases have usually been passed to the state courts.

Further protection should also be provided by the existence of an official body responsible for indigenous affairs, FUNAI. FUNAI was created in 1967 to protect the indigenous population, in the Ministry of the Interior, to replace the discredited Indian Protection Service. FUNAI's role is defined as that of guardian: it is to assist Indians to exercise their own wishes, rather than imposing its will on them. FUNAI has considerable powers to prevent abuses against Indians. For example, it is able to enlist the help of federal police or the armed forces to protect Indian lands from invasion.

However, there have been many allegations that FUNAI has abused its role as guardian of the Indians. It has failed to prevent attacks on Indians and the illegal invasion of their lands. Its administration has been the subject of numerous complaints, from waste of resources to corruption and ill-treatment. FUNAI has also been criticized for poor recruitment and inadequate training of its staff members, which in some areas has left FUNAI posts ill-equipped to respond to the needs of indigenous groups and, crucially, unable to protect them against human rights violations. Nevertheless, there remain a number of highly dedicated staff at different levels of the organization and criticism of the practice and working methods of FUNAI should not be construed as a criticism of FUNAI staff. The future of FUNAI has been in doubt since the present government took office in March 1990; over an 18-month-period proposals were made for its extinction, for its transfer to the Environment Secretariat, and for its transformation into a Special Secretariat attached directly to the Presidency. In July 1990 responsibility for FUNAI was transferred from the Interior Ministry to the Ministry of Justice.

FUNAI has recently undergone significant cuts of its resources and staff. In February 1991 FUNAI's responsibilities for indigenous health and education were transferred by presidential decree to the Health and Education Ministries respectively. Indigenous groups were incorporated into a new integrated national system for health care with the result that, in several areas, Indians have to seek medical treatment in towns and settlements where they face hostility.

FUNAI's diminished role has been welcomed by some indigenous leaders. Others see it as an indication of the shedding of federal responsibility for Brazil's indigenous population. It is feared that individual state governments will increasingly be drawn into questions related to indigenous populations. Amnesty International has found that local, state and regional interests and authorities often appear to be hostile towards the indigenous population and that these levels of government are not best placed to offer indigenous groups adequate protection against human rights violations. There are numerous examples of the

absolute disregard state authorities have displayed for Indians' human rights. Under the 1988 Constitution the Public Ministry is obliged to intervene in and monitor all legal cases involving indigenous interests. Since 1988 a special department for indigenous interests has monitored cases from the Federal Attorney General's office.

Despite the safeguards introduced by the new constitution Indians have continued to suffer human rights abuse. The increased provision for federal intervention on behalf of Indians under threat has failed to provide substantial protection and Indians remain at the mercy of those contesting their land rights. The underlying causes of the continued abuses are first, the virtual impunity extended to those responsible for the harassment, intimidation and killing of Indians, and secondly the inordinate delays in the few cases where prosecutions have been brought.

A climate of impunity

Common to every case of abuse is the fact that those responsible almost always escape justice. As a consequence those trying to gain land from Indian communities feel they may use violent methods without fear of redress. This pattern is identical to that Amnesty International has documented in killings and harassment of peasants in land disputes. The guilty go free.

Most of the human rights abuses against Indians surveyed by Amnesty International have been carried out by hired gunmen, or armed settlers and prospectors.

Police officers have also been responsible for human rights violations. Police officers have been charged for participating, while off duty, as hired gunmen in several recent cases of killings of rural peasant and Indian leaders. There are three types of police forces in Brazil: civil and military police, who are accountable to state authorities and the federal police. The civil (judicial) police are responsible for investigating crimes. The military police are responsible for maintaining order and for carrying out land evictions. Because indigenous affairs are regarded as a federal concern, only federal police have authority to enter indigenous areas and are required to be accompanied by members of FUNAI. However, they do not report directly to the Attorney General's Office as they are subordinate to the Ministry of Justice, nor to FUNAI. This has caused conflicts in priorities regarding the protection of indigenous rights and the non-implementation of orders by federal police. In many reports studied by Amnesty International, however, it appears that state civil and military police frequently enter indigenous areas without informing FUNAI and have been responsible for human rights violations during such incursions. The impartiality of state police forces has been called into question by frequent reports of police and known gunmen working side by side in land evictions, of police being paid directly by landowners for such operations, and of gunmen frequenting police stations.

Police officers responsible for human rights violations routinely escape prosecution.

Velario Tamir Macuxí, a 17-year-old Indian from the Macuxí community of Cachoerinha, was found dead in his cell at the civil police station in Normandia, Roraima, on the morning of 23 October 1988. He had been arrested the previous evening with another two Indians and three youths after a fight at an election rally in Normandia. All six were allegedly beaten as they were being taken to the police cells. The Indians who shared his cell reportedly stated that Velario Tamir appeared to have been extremely badly beaten. When he started to call out for water and medical attention the other youths were put in another cell. Early next morning Velario Tamir was found dead. The other five youths were released and reportedly told to go home and tell no one about what had happened. However, one of them told the military police that he had also been badly beaten. He was treated in the hospital in Normandia by an army doctor for extensive injuries, apparently sustained in police custody.

Over two years later, the police commander in Normandia informed an Amnesty International delegate that four civil police officers had been charged with "bodily harm, followed by death" in connection with Velario Tamir's death, but could not say whether they had been suspended from duty pending the trial. By February 1991 the police charged had not appeared at any of the three court hearings set. The case has now effectively collapsed.

Another Macuxí Indian, Roberto Aureliano, was detained by police officers and taken to the same police station in Normandia in March 1991. Roberto Aureliano is a mute, and was apparently arrested after a misunderstanding. He was reportedly so badly beaten in custody that he had to be hospitalized after his release. There was no inquiry into this incident, but the police chief was later transferred after the alleged torture of a non-Indian in the same police station.

Police officers have also been responsible for human rights violations when intervening in land disputes on behalf of the landowners. In March 1985, 19 Kaiowa Indians from Jaguapire village in the Guaraní indigenous area of Mato Grosso do Sul were violently evicted by three military police officers and gunmen who had no authorization or legal order. Several of the Indians were beaten and kicked by police and gunmen and five, including a woman of over 70, needed hospital treatment. A federal police inquiry was opened, but the case made no progress in the courts. In September 1988 a federal court ruled in favour of the landowners with claims in the area of Jaguapire; the Kaiowa were definitively evicted and distributed to other reserves. In 1991 the regional federal court of São Paulo annulled the lower court's decision and referred the case back to it for retrial. But the Kaiowa remained confined to an overcrowded FUNAI post in the meantime.

Recently indiscriminate police attacks on Pataxó-hã-hã-hãe Indians from the Paraguaçu-Caramaru Reserve in Bahia state have increased. Indian villagers trying to sell their produce in the local markets have been harassed and beaten by the military police. In October 1990 Valdeci Julio, a Pataxó-hã-hã-hãe stall holder, was beaten by military police in the Pau Brasil market. The reason for this was apparently a complaint by another stall holder that Valdeci Julio's mule was causing a nuisance. When other Pataxó-hã-hã-hãe Indians tried to protect him they were also beaten, and threatened with revolvers by the police. The Indians then returned to their village. Later that day the local civil police chief arrived at the village with five armed officers, saw Valdeci Julio riding his mule and fired shots near him, causing him to fall to the ground. He was dragged through the mud, beaten with truncheons and kicked in the face. He was then thrown unconscious into the back of a police vehicle and taken to the police station. He was released some three hours later — unable to stand, his face swollen and his body covered in bruises. He was admitted to hospital for treatment. A police inquiry has apparently been opened into this incident, but there is no news of its progress.

In 1991 another Pataxó-hã-hã-hãe Indian was detained by the military police — allegedly because he was intoxicated — beaten, and then transferred to the public jail in Pau Brasil, where he was again beaten up, this time by the prisoners.

On 11 January 1991 Genildo Kambiwá, a Kambiwá Indian travelled to the capital of Maranhão, São Luis, with Elisa Cabra, a Guajajara Indian, who needed hospital treatment for tuberculosis. On finding that there were few supplies at the hospital, Genildo Kambiwá went to the regional administrator of FUNAI for assistance and the two of them went to a supermarket to buy food and other necessities for Elisa Cabra. At the cash till the FUNAI administrator refused to pay for the supplies. The police arrived and Genildo Kambiwá was arrested. According to reports by CIMI in Maranhão, he was tortured by civil police in custody. An inquiry has reportedly been opened.

More common than direct police involvement in human rights violations is their absolute failure to bring those responsible to justice or to protect Indians against abuses. In case after case attacks on Indians go uninvestigated. The entire range of protective mechanisms provided by law are flouted by military and civil police officers, and sometimes by the federal police, as are court rulings and injunctions.

Even when those responsible for attacks are known they are rarely apprehended. On 5 September 1988 Donaldo Williams, a Macuxí Indian from the Kenarrapi community in the Raposa/Serra do Sol area of Roraima, was shot dead. According to reports, he was returning to his canoe after helping a group of Macuxí build a corral for cattle near Kenrappi when he was threatened by a rival claimant to the land, who shot and killed him. The killing was witnessed by his wife and two of his assailant's colleagues. The man was arrested but released shortly afterwards. He was reported to have returned to the area of the crime and to have continued to threaten members of the Kenrappi community, including Donaldo Macuxí's relatives. In January 1991 he reportedly threatened one Indian by saying: "I'll do the same to you as was done to the other one". Civil police also identified suspects in the case of the killing of Macuxí Indian Lorival Riberio da Silva in Agua Fria on 11 November 1990. The Indian was stabbed by one miner and then beaten to death in public by two others. Despite the identifications, no arrests have been made.

In March 1991 Sebastião Deodato dos Santos, a Truka Indian from Pernambuco state, tried to report the killing of his 17-year-old brother-in-law, Arnaldo José dos Santos, to the military police. He himself had been wounded in the attack and he was able to identify the two gunmen responsible. When he went to report the crime to the Military Police Battalion at Cabrobo the commander allegedly told him: "the only bad thing was that you didn't die". Although the military police agreed to ask the civil police to open an inquiry, Sebastião Deodato dos Santos has yet to be interviewed about the incident by police. There has been no further progress in this case. Sebastião Deodato dos Santos claims that when he told local FUNAI officials that he feared for his life it was suggested he leave the area. The same suggestion was made to another Truka indian, Antonio Pedro

dos Santos, who sought action from FUNAI and the federal police following threats to his life by settlers seeking land inside the indigenous area. The threats culminated in his house being burned down and all his family's possessions destroyed on 28 July 1991 by three men.

The consequences of a persistent failure of the Federal Police to take action against those violently threatening Indians, can clearly be seen in the case of the Nambiquara. In this case violence was left unchecked for so long that FUNAI staff themselves are now in danger from loggers.

In April 1991 settlers opened fire on Negarote Indians, a sub group of the Nambiquara, in Mato Grosso State. The Indians were attempting to protect an ecological buffer zone on the edge of their area which FUNAI and INCRA, the federal land agency, had negotiated with settlers the year before. The police refused to take any action whatsoever to investigate the incident.

Some indigenous groups in this area had entered into contracts with timber merchants to allow logging on their land. The Negarote, however, had not agreed to any kind of timber felling in their area and had defended their borders by appearing naked and daubed in war paint and frightening settlers away. In the past this had proved effective, and it was the tactic the Indians used in April 1991, when they came across a group of settlers using tractors to deforest the buffer zone. However, this time the settlers opened fire on the Indians and wounded one of them. The incident was reported to the police, who were also given the licence numbers of the timber trucks working in the area. They refused to take action; they would not even warn the settlers not to use arms against Indians.

The lack of action by police caused the Negarote to arm themselves. In September 1992 Negarote Indians tried to impound machinery illegally extracting timber from their lands. They were ambushed by gunmen - shots were fired on both sides, but no-one was injured. Following this Negarote leaders and FUNAI staff defending the Negarote received death threats and were followed. One timber trader openly menaced Marcelo dos Santos head of the local FUNAI post, and his family, waiting in his car outside his house. The timber trader freely circulated in the town of Vilhena despite an arrest warrant issued in his name. Local federal police agents persistently ignored these threats and failed to implement the arrest warrant. It was not until FUNAI headquarters intervened with federal police headquarters in Brasília, Mato Grosso and Rondônia, that any action was taken by the federal police.

Who prosecutes ? — jurisdictional disputes

In 1991 the case of two Guajajara Indians killed in Maranhão state in 1980 finally came to trial. The case was tried in a state court in the town of Barra do Corda, in a region which is hostile to the Guajajara community. The landowner and gunman charged with the killings were acquitted.

Between 1980 and 1992 some 160 Indians are known to have killed in disputes over land. Very few of these cases have come to trial and Amnesty International knows of only one in which those responsible were condemned. In 1988 two gunmen, a landowner and a timber merchant were given sentences ranging from two to 27 years' imprisonment for the murder of three Xacriabá Indians. Two of the Indians, Rosalindo Gomes de Oliveira and José Pereira dos Santos were shot as they slept. The third, Manoel Fiusa da Silva, was killed as he ran to their assistance.

This is an unusual case because it was the first one involving the killings of either Indians or peasants in land conflicts in which not only gunmen were convicted, but also those who contracted them. The conviction was largely attributed to the fact that the case was prosecuted by the Federal Prosecution Service and was heard in a federal court.

State courts, which are often susceptible to pressure from powerful local interests, are widely considered to be unable to judge cases involving Indians impartially. The question of whether federal courts have competence to try all cases involving Indians has been much disputed. Indigenous groups have argued that such cases are more likely to see progress in federal courts, given the susceptibility of state courts to local political pressure, hostile to the Indians.

The failure to resolve the question of whether cases of human rights violations against Indians should be judged in federal or state courts, has meant that years go by while issues of jurisdiction and competence are debated in the courts. In some cases, police investigations have been suspended for months while anthropological tests are carried out to determine whether the

victim was an Indian, and the case therefore a federal matter. The years of delay in hearing cases, whether the result of jurisdictional disputes, lack of resources, or deliberate obstruction of the judicial process, contributes to the climate of impunity for crimes against Indians. It has also left indigenous communities without any confidence in the judicial system.

The net result is that very few cases involving abuses against Indians come to trial. Even cases of extreme gravity which have had profound effects on the indigenous community are left languishing in the courts for years. Although there is often sufficient evidence to bring such cases promptly to trial, they are constantly stalled, calling into question the authorities' commitment to upholding the human rights of Brazil's indigenous peoples.

The Ticuna massacre

It is more than four years since 14 Ticuna Indians were massacred at the mouth of Capacete Creek, just outside the officially demarcated São Leopoldo Indigenous Area in Amazonas state. They were killed by settlers, allegedly employed by a local timber merchant, on 28 March 1988.

Since 1980 the Ticuna have become increasingly organized in their campaign for official demarcation of their lands. To date, they have been granted only 10 per cent of the territory they claim. However, they have increasingly become the victims of human rights abuses as a result of their peaceful campaign. Land in the São Leopoldo Indigenous Area is claimed by a local timber merchant with whom the Ticuna have had a long-running dispute about the illegal extraction of timber.

The killings occurred on 28 March 1988. A group of 100 Indians from four communities — men, women and children — were waiting at Capacete Creek for the return of a delegation who had gone to Benjamin Constant to report the theft of a bull. They were apparently picnicking and singing. When the gunmen approached the Indians told them that they had come in peace and were unarmed, but the gunmen opened fire. After the first shots were fired the Indians started to run for cover: some headed into the forest, some tried to escape in canoes, some took refuge in a house.

Six of the 14 Indians killed were children, as were several of the 23 Indians injured in the attack. Most of those killed had tried to escape by boat. The bodies of 10 of the victims, which were apparently swept away in the river, were never recovered. One boy was saved by hiding in a clay oven for baking cassava bread. A 12-year-old girl who was shot in the back and in the nape of her neck, managed to escape by running into the forest with another girl. Though wounded she swam across a creek and made her way back on foot to São Leopoldo. Leila Valentin Marcos, aged six years, was also wounded. She was in a canoe with a number of other people, all of whom were killed. Although more than 12 pieces of gunshot had lodged in her head, she survived by pretending to be dead. Her nine-year-old brother, Aldemir, did not.

Federal police arrived at the scene the next morning. Although they found the gunmen who had allegedly taken part in the attack still armed, they did not arrest them. The police confiscated their weapons but failed to identify them correctly; a necessary preliminary procedure for ballistic tests. It was some time before the police took statements from the men the Ticuna had identified as their assailants. One week later only five suspects had been interviewed and charged.

On 21 April, more than three weeks later, the federal judge in Manaus issued warrants for the arrest of the timber merchant and 10 of his employees. Federal police arrested nine of the accused, who were held in the federal police station in Tabatinga. Two of the warrants — for the arrest of the timber merchant and a local teacher, who allegedly led the attack — were not enforced by federal police despite the fact that both men had been seen in Benjamin Constant.

In early April 1988 the Ticuna decided to send delegates to Brasília to express their concern directly to the government that the killers might go unpunished because of the hostility of local authorities and of the general population to the Indians. The commission, which was headed by Nino Fernandez, the president of the General Organization of Bilingual Ticuna Teachers, OGPTB, also asked the government to compensate the families of the victims and to resolve land conflicts in the region by speeding up the demarcation of Ticuna land. The commission was received by the Attorney General, the Minister of Justice, the Minister of the Interior and the government's Human Rights Council. On the commission's return to the upper Solimões region, FUNAI's regional administrator informed Nino Fernandes, and three other leaders of the OGPTB, that their contracts had been terminated. The OGPTB was founded in 1986 and groups together 150 Ticuna teachers, 70 of whom have paid contracts with FUNAI. OGPTB has tried to give emphasis in its teaching to the history, language and culture of the Ticuna people. On 5 May FUNAI prohibited anthropologists from the Magutá-Upper Solimões River Research and Documentation

Centre based in Benjamin Constant, who had worked closely with the Ticuna for a number of years, from entering any indigenous areas on the grounds that “the behaviour of the members of Magutá in the Ticuna area is not compatible with the indigenist policy of the government”.

Lawyers for the Ticuna continue to argue that the prevailing atmosphere in the region, including the hostile attitude of local authorities towards the Indians, may adversely affect the conduct of the case. Their concern is illustrated by the fact that 3,000 local people signed a petition protesting about the arrests of the settlers after the killings. When an AI delegate sought information about the case at the local police station in January 1991, police referred to the case in which 14 unarmed Ticuna had been massacred as “that case when the Indians attacked the settlers”. The Ticuna's lawyers are calling for the case to be transferred to the state capital, Manaus. Their call is supported by the Amazonas State Bar Association.

Judicial proceedings in the local court of Benjamin Constant have been subjected to lengthy delays. It took the court over a year to officially inform the accused of the charges and to give them time to appeal or contest them. At the end of 1990 — over two-and-a-half years later — the Benjamin Constant judge indicted 13 men for the killings, including the local timber merchant accused of masterminding the attack, and ordered them to be sent for trial by a jury.

In 1991 the local public prosecutor of Benjamin Constant requested the trial be transferred to Manaus. The local judge refused to transfer the trial and ordered it to be held in November 1991 in Benjamin Constant. The local public prosecutor then appealed to the State Appeals Court, which postponed the start of the trial until it decided on the appeal. In a reply to letters from Amnesty International members expressing concern at delays in bringing the case to trial, an advisor to the Governor of Amazonas stated that under the principle of separation of powers the state government had to respect the independence of the judiciary and that proceedings were being conducted according to the principles of fair trial. The reply also stated that Governor Mestrinho was concerned about Brazil repeating the atrocities against indigenous populations that took place in countries where today people and organizations hypocritically pretend to teach mankind and Amazonas state in particular how to deal with indigenous matters.

A travesty of justice: the case of Marçal de Souza Guaraní

Long delays in criminal proceedings are not exceptional. It is nine years since Marçal de Souza Guaraní, a Guaraní-Nhandeva Indian who achieved national and international fame for his defence of Indian rights, was killed. Those charged with murdering him have yet to be brought to trial.

Marçal de Souza was a nurse who worked for FUNAI, setting up medical clinics in Indian reserves. He became an outspoken advocate of Indian rights during the 1970s. When Pope John Paul II visited Brazil in 1980, Marçal de Souza made a special appeal bringing attention to attacks on indigenous groups and their lands. “Brazilian indigenous tribes are being massacred, exploited and killed by hired gunmen, they slaughter us like animals. When Brazil was ‘discovered’ we were a large nation, and now we are being killed, we live in misery, marginalized by those who have taken our land, the great Brazil which calls itself a Christian country”.

In November 1983 Marçal de Souza was killed by two gunmen in his clinic on the Campestre reserve. Shortly before his killing he had been campaigning for the demarcation of the Piraqua Indian Reserve, in the municipality of Antonio João in Mato Grosso do Sul. Although the reserve was recognised by FUNAI, the landowner laying claim to it asserted that the Indians were “invaders” and destroyed official FUNAI plaques marking the reserve's boundaries. Shortly before his death Marçal de Souza told his family that the estate manager had offered him money to persuade the Indians to leave and when this failed, had threatened him with death.

The state government initially attempted to disguise the reason for his killing. They issued statements to the press suggesting that Marçal de Souza's first wife had employed the gunmen who killed him. This version of events was discredited by the federal police whom FUNAI asked to investigate the killings. In June 1989 the federal police issued their report, which found the owner and manager of the estate in dispute with the Piraqua reserve responsible. Ballistic tests had indicated that the estate manager's gun had fired one of the bullets found at the scene of the crime. However, the material evidence then mysteriously disappeared. Both the murder weapon, the bullets and all paperwork registering them were never to re-appear — seriously undermining the prosecution case. The disappearance of material evidence is not uncommon during police inquiries into killings of community leaders in rural areas, where influential local figures have been implicated.

The case and any further investigation was then delayed for three years, while the question of jurisdiction to try it was debated in the federal courts. In June 1986 the federal appeals court finally decided that the case should be tried in the state courts. The trial papers were not sent back to the lower court for another 15 months. It was a further year before the prosecutor brought formal charges against the landowner and the estate manager. It took another 15 months for the judge to agree to the charges and commit the case for its pre-trial stage. A new judge appointed to the judicial district then assumed the case, and asked for all the witnesses to be reheard. In 1991 the judge ordered the exhumation of the body to try and reconstruct the ballistic evidence. Because of the delays in proceedings, the estate manager was released from custody. By law suspects cannot be held for more than 81 days without being brought to pre-trial hearings — in this case these did not commence for six years after the killing. The estate manager has since absconded. The trial cannot proceed without him.

Victimizing the activists

There is a long standing pattern of the intimidation of activists for Indian rights, and some have been killed. In 1985 Atikum leaders Jose Atikum and Amilton Pachano travelled over 2,000 kilometres to Brasília to denounce death threats against Atikum Indians and seek guarantees for the community's safety. They were killed after they returned to Floresta. Little is known about this case and no-one has been brought to trial for these killings.

In 1988 two Kaiapó Indians were prosecuted under the Foreigners Law for having “contributed to a crime” allegedly committed by a North American ethnobotanist. The three had attended a seminar in the USA where they had expressed concerns regarding a proposed hydro-electric project which would flood officially recognized indigenous territory. They also visited World Bank headquarters in Washington D.C. Brazilian officials apparently believed that the Indians' comments had delayed a World Bank loan to Brazil for the project. When one of the Indians, Paulinho Paiakan went to testify to the federal court about the case, the federal judge refused to hear his testimony because the Indian was wearing traditional dress, rather than the shirt and trousers demanded by the judge. The charges were later dropped, but the speed with which the case was brought against the Indians contrasted sharply with the delays in cases where Indians are the victims.

In several cases, when Indians have reported abuses the authorities have responded with reprisals against organizations working with the Indians. In September 1987, 21 Guaraní Indian leaders visited Brasília to press for demarcation of Indian areas. They presented a list of killings which they said were the work of landowners in the Sete Cerros area. An investigation was opened by federal police. The main thrust of it, however, was not to investigate the killings but to discover who had drawn up the list. Drawing up the list was described by local FUNAI officers in evidence given to police, as “trouble-making, aimed at discrediting FUNAI”. All the Indians who had signed the letter were interrogated about the role of a local independent organization, the Kaiowa-Nhandeva Project, PKN, in helping them put forward their claims. The PKN which had been working with the Guaraní since 1974 in Mato Grosso do Sul. The federal police concluded that the denunciations were without substance and were aimed at discrediting FUNAI. They recommended an investigation into the PKN. The investigation was carried out by the Information Sector of FUNAI and the National Information Service, SND, an intelligence agency created during the period of military rule and held responsible for human rights violations in that period. In May 1988 members of PKN and CIMI were banned from entering the indigenous areas. In September 1988 a police inquiry was opened against three members of the PKN who were accused of inciting Indians to invade land, destroy fences and steal cattle. The case against them continues.

'The unfortunate reality'

“This ... is the unfortunate reality of the administration of FUNAI in the northeast, an administration clothed in lies, in the abuse of power, and discrimination against indigenous peoples, which commits every sort of arbitrary act against indigenous groups, counting on the protection of influential state politicians, doing whatever it wants, including commissioning the killing of those who are inconvenient....”.

Thus an adviser to the President of FUNAI in Brasília concluded his May 1991 report on the killing of Abdon Leonardo da Silva, the chief of the Atikum Indians of Pernambuco state. Abdon da Silva and his brother, Abdias Joao da Silva, were ambushed by three gunmen on 28 December 1990 and shot dead as they were returning to their village, Serra Uma, in the municipality of Floresta.

Abdon da Silva was undoubtedly singled out because he was an outspoken advocate of Indian rights. He had already survived one attempt on his life. After his election as community chief he had promised to seek demarcation of Atikum lands and to tackle a series of abuses being committed against the community. He complained about ill-treatment, reporting to FUNAI that military police officers in the Atikum indigenous area “are not equipped for any kind of dialogue with the indigenous population, and have been involved in arbitrary and other unpleasant behaviour towards defenceless Indians”.

There are strong suspicions, raised in documents prepared by FUNAI headquarters in Brasília, that local FUNAI staff were involved in planning, carrying out and covering up the killings. Abdon da Silva had repeatedly denounced arbitrary acts by local FUNAI staff. In the year before his killing, Abdon da Silva had made five trips to Recife, and two trips to the national capital Brasília, to denounce irregularities by local FUNAI staff, including the diversion and sale in the neighbouring town of seeds, medicines and building materials which were supposed to be destined for the Indians. He sought the removal of four staff members including the head of the local FUNAI Indian post. He reported having received death threats from FUNAI staff, including the head of the local post, and sought guarantees for his safety. He alleged that the eight Atikum Indians killed since 1980 had all been threatened by a FUNAI staff member before their deaths. In 1986 a FUNAI report had attributed responsibility for the killing of four of the eight Indians to this staff member. “We know from the surviving victims that the staff member was the intellectual author of the sinister plan and his son was in charge of executing it”. No federal police inquiry was opened into the killings, nor was action taken to remove the staff member from the area.

An investigation into the death threats against Abdon da Silva was ordered by the Attorney General's Office in 1990, with instructions that local FUNAI staff were not to be notified. Regional FUNAI headquarters, however, allocated the investigation to local FUNAI staff who immediately informed the staff member concerned.

Between October and December 1990 rumours circulated that Abdon da Silva was to be killed. A sum of 500,000 cruzeiros (US \$3,000) was allegedly being offered to the gunman willing to kill him. Abdon da Silva received no protection before he and his brother were killed at the end of December. Since the killings, seven other community leaders have left the area in fear of their lives.

A federal police inquiry into the case was concluded on 25 April 1991. The report stated that local court offices and FUNAI officials had refused to cooperate in providing the full names and details of those to be charged. Federal police nevertheless sought an arrest warrant for the FUNAI staff member; one of his sons and two other men. The local judge ordered the arrest of three of the men, but not the FUNAI staff member. The judge argued that the latter was regularly making court appearances on other charges for marijuana production and thus there was little danger of his absconding.

On 19 June 1991 the Federal Attorney for Pernambuco state petitioned the courts for the case to be transferred to federal jurisdiction on the grounds that the crime was committed inside an indigenous area. No further progress is known to have been made.

‘A genuine plot to kill’

The body of Vicente Cañas Costa, a 47-year-old Jesuit priest, was found on 16 May 1987 in the Salumã indigenous area in Mato Grosso. Vicente Cañas had lived and worked for more than 10 years with the Salumã (also known as the Enauenê-Nauê) Indians of Mato Grosso. The Indian reserve had been repeatedly invaded by loggers who reportedly threatened Vicente Cañas with death. The priest had sought official action to expel the loggers from Salumã lands.

The priest's body was partially decomposed by the time it was found but a perforation in the abdomen was detected, apparently caused by a sharp instrument. There were also signs of a violent struggle in his hut. However, a forensic examination by the Mato Gross Medico-Legal Institute concluded that the cause of death was “undetermined”. Parts of Vicente Cañas' remains were sent to Minas Gerais for further analysis. Some of these were mislaid by the authorities, which hampered the investigations. In addition, the local police claimed they had insufficient resources to investigate the death. As a result the inquiry made little progress.

In 1989 CIMI produced statements from two Indians who said they had spoken to gunmen who admitted to having killed Vicente Cañas. One of the gunmen allegedly named a local police chief as the person who had arranged the murder on behalf of landowners who wanted to extract timber from Salumã lands. The same police chief was initially put in charge of the

murder investigation but was later removed from his post, reportedly because of his involvement in other killings.

In June 1991 a state deputy requested that the state government reopen the case. “We have information from various sources, combined with other facts and evidence, that allows us to conclude that there was a genuine plot to kill Vicente Cañas”, she told the state assembly. The same month, the president of the Brazilian Bishops Conference asked the Justice Minister to transfer the case to federal jurisdiction, on the grounds that Vicente Cañas had been killed while trying to defend indigenous land, a matter of federal concern. The Attorney General's office agreed that the case fell under federal jurisdiction and assigned federal police to the investigation in August 1991. No further progress has since been reported.

4 Conclusions and recommendations

Members of Indigenous communities in Brazil have been abducted, tortured and killed for their lands or the resources on them. As the pressure for resources such as minerals and timber increases, so indigenous groups become more vulnerable to armed attack by private agents, including gunmen hired by land claimants or timber merchants. These practices have gone almost entirely unpunished, and state level authorities have colluded in them. State police forces have participated in illegal raids on Indian areas and subjected men, women and children to beatings, and cruel, inhuman and degrading treatment. In case after case Brazilian authorities have failed to prevent further abuses and tensions between the indigenous and non-indigenous population, either by promptly and justly resolving land conflicts, or by taking effective action to bring those responsible for abuses against members of indigenous communities to justice. Impunity in such cases has stimulated the escalation of violence, putting whole communities at risk, in spite of comprehensive guarantees for indigenous people in the Brazilian Constitution.

Given the pattern of abuses, and indifference, of local and state authorities vis a vis indigenous interests, Amnesty International believes that federal agencies may be more effective in protecting indigenous groups against human rights violations. However, Federal Police have sometimes been slow to act on instructions from FUNAI or the Attorney General's office to protect the human rights of indigenous people or promptly investigate abuses of these rights.

Similarly, federal courts appear to have a greater chance than state courts of impartially trying abuses against indigenous people. Yet jurisdictional disputes about where such cases should be tried have also lead to impunity. The years of delay in hearing cases, whether the result of jurisdictional disputes, lack of resources or deliberate obstruction of the judicial process, have meant that those responsible for crimes against Indians remain at large. Even cases of extreme gravity which have had profound effects on the indigenous community concerned are constantly stalled, calling into question the authorities' commitment to upholding the human rights of Brazil's indigenous peoples. It is time to call a halt to this impunity, and ensure that the rights of indigenous people, enshrined in the 1988 Constitution, are truly enjoyed by them.

Recommendations

Protection against abuses and an end to impunity

1. Authorities at all levels, local, state and federal should ensure that any private bodies, such as commercial enterprises, settlers, miners, ranchers, and loggers which have contact with indigenous peoples fully respect the fundamental human rights of indigenous peoples. If abuses do occur, they should be promptly investigated and the perpetrators brought to justice.
2. As newly contacted or isolated indigenous groups are particularly vulnerable, special care must be taken to protect them against human rights abuses.
3. The Brazilian authorities should ensure that justice is equally available to all those living within their national borders irrespective of their ethnic origin or the remoteness of the areas in which they live.
4. Any evidence of collusion between state employees, law enforcement officials and private parties in instigating or perpetrating such abuses or obstructing subsequent criminal investigations should be fully investigated. If collusion is found to have occurred, those responsible should be brought to justice in accordance with the law.

5. All cases of violent attacks and abuses against members of indigenous communities should be thoroughly investigated and those responsible brought to justice. No impunity in law or practice, should be permitted.

6. Given the record of failure and lack of impartiality of local courts in dealing with cases of abuses involving rural workers and indigenous peoples in rural areas, such cases should be tried in federal courts. Disputes of competence between state and federal courts to try such cases should be clearly resolved, to avoid lengthy delays in bringing cases to trial.

Resolution of land disputes

7. The Brazilian Government should take account of the principle reflected in Article 18 of the ILO Indigenous and Tribal Peoples Convention No. 169 (1989) as an important factor in efforts to prevent abuses against indigenous peoples in the context of land or resource disputes: "Adequate penalties shall be established by law for unauthorized intrusion upon, or use of, the lands of the peoples concerned, and governments shall take measures to prevent such offences".

8. The speedy and just resolution of unresolved land conflicts, including those subject to litigation, could have a major impact on reducing the instances of abuses against indigenous which have occurred in many areas of Brazil, often perpetrated by gunmen acting on behalf of private interests in the context of land disputes.

9. Since abuses against indigenous peoples have occurred during evictions, or attempts to drive indians off their land, steps should be taken to ensure that evictions are not authorized and do not take place except in accordance with fundamental principles of justice and relevant international standards, taking full account of the Constitution, and laws protecting the lands of indigenous peoples. When evictions do take place, measures should be taken to avoid the use of force and prevent abuses against indigenous peoples.

Those occupying the contested land should be adequately informed about relevant court orders before any eviction takes place, and their opportunity to challenge the legality of the eviction order should be ensured. A competent judicial official and a representative of the official Indian agency should accompany police officers empowered to carry out the order. Police officers who carry out authorised evictions should be trained in and obliged to comply with international standards regarding the use of force by law enforcement officers, including the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

Indians before the courts

9. Current arrangements between the Federal Public Ministry and FUNAI to monitor legal proceedings involving indigenous people, should be clarified, so that in all cases indigenous people charged with criminal offences, are offered adequate legal assistance, as stipulated in Article 14 of the International Covenant on Civil and Political Rights.

10. Legal proceedings against indigenous peoples should always be conducted in their own language or with adequate interpretation provided.

Treatment of indigenous people in custody

11. The appropriate authorities should review arrangements for the treatment and custody of all prisoners, to ensure that they are treated humanely and in conformity with the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the UN Standard Minimum Rules for the Treatment of Prisoners, and Article 10 of the ICCPR, which states: "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person".

12. These authorities should take into account the special circumstances and needs of indigenous detainees, including those who may have never before lived apart from their community. They should be detained as near as possible to their community in order to facilitate visits by their relatives, friends, and other community members.

13. In situations where there is hostility or racial prejudice against indigenous detainees, whether from guards or other

inmates, the authorities should take special steps to protect indigenous detainees.

14. Allegations of torture, or cruel inhuman and degrading treatment or punishment should be promptly and thoroughly investigated, and those found responsible brought to justice.