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**Brazil**

**"Foreigners in our own  
country": Indigenous Peoples  
in Brazil**



AI Index: AMR 19/002/2005

INTERNATIONAL SECRETARIAT, 1 EASTON STREET, LONDON WC1X 0DW, UNITED KINGDOM

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# "Foreigners in our own country": Indigenous Peoples in Brazil

Summary

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*"...we are being treated like foreigners in our own country, and even as a threat to sovereignty. With this the hope of seeing our territories demarcated and ratified little by little has been substituted by fear."*

*"We heard it said that the police are coming with a tractor to destroy everything. We would like to know who is going to feed our children...We would like to let the police know we are not leaving. This is final. We are not leaving the land alive."*

Both of these statements, that clearly demonstrate the fear and desperation felt by indigenous peoples in Brazil, were made in 2005. The first was made directly to Amnesty International by an internationally renowned Brazilian indigenous leader. The second was made publicly by the Guarani-Kaiowá community of Cerro Marangatu in Mato Grosso do Sul state, threatened with eviction from their ancestral home - land that already has been officially demarcated in their favour by the Brazilian government.

Amnesty International has documented and campaigned against human rights violations committed against indigenous peoples in Brazil, their leaders and those who defend them, for many years. In 2005 they continue to be victims of attacks, killings and other forms of violence and discrimination, often committed with impunity. Successive Brazilian governments have failed to deliver on their international and constitutional obligations to fully and finally recognise indigenous land rights. Worryingly, there has also been a recent growth in calls for a reversal of many of the gains won by Indians in Brazil since the implementation of the country's 1988 constitution. For these reasons, Amnesty International is concerned that their safety, and even their future survival, is at risk.

For hundreds of years, indigenous peoples in Brazil have been violently driven off their land by those seeking to claim its wealth for themselves. Today, this violence continues with the involvement of many competing interests that include businesses, prospectors, cattle ranchers, landowners, logging companies and the military. Such vested interests often have substantial economic and political lobbying powers which they can use to delay and interrupt resolution of land disputes.

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Over the years, indigenous leaders campaigning to speed up the transfer of land have suffered death threats, violent attacks and killings, with little or no protection from the State.

The cases and situations documented in this report represent different examples of the complex reality faced by indigenous peoples in Brazil today. What unites them is that they are all situations that have arisen as a result of many decades of State inaction. Amnesty International is concerned that the current Brazilian government, which has so far failed to implement a coherent strategy for resolving the problems faced by Brazilian Indians, is merely repeating and exacerbating the errors of the past. The organisation is calling on the Brazilian authorities to fulfil their constitutional and international obligations to protect Indians and their land.

*Cover Photo:* The son of Marcos Verón, Ava Taperendy'i, standing next to a memorial to his father in Takuara, Mato Grosso do Sul, August 2004.© AI

<b>KEYWORDS:</b>
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# Brazil

## “Foreigners in Our Own Country”: Indigenous Peoples in Brazil

### 1. Introduction

Amnesty International has documented and campaigned against human rights violations committed against indigenous peoples in Brazil, their leaders and those who defend them, for many years. In 2005, Indians<sup>1</sup> continue to be victims of attacks, killings and other forms of violence and discrimination, often committed with impunity. Successive governments have failed to deliver on their international and constitutional obligations to fully and finally recognise Indian land rights. Worryingly, there has been a recent growth in calls for a reversal of many of the gains won by Indians since the implementation of Brazil's 1988 constitution. The frustration of Brazilian Indians was recently shown by the occupation of the Amazon headquarters of FUNAI, *Fundação Nacional do Índio*, the National Indian Foundation,<sup>2</sup> in Manaus in January 2005.

Amnesty International has identified several areas of concern where failure to act by the authorities has exposed Indians to human rights violations. The failure of Brazil to guarantee their right to land, through demarcation and ratification of many indigenous territories, and the very slow process by which this is achieved when it does take place, has contributed to attacks on Indians, as well as aggravating the severe economic and social deprivation felt by many communities. In areas where there has been an identified and recognised need for federal protection of Indians and their land, the authorities have failed to take action despite the warnings of senate commissions or the Organisation of American States, as in the cases of the Cinta Larga in Rôndônia and the Xukuru in Pernambuco. A failure to punish those who have carried out attacks and killings in the past, has laid the foundations for the violence of the present.

For hundreds of years, Brazilian Indians have been violently driven off their land by those seeking to claim its wealth for themselves. Today, this violence continues with the involvement of many competing interests. These include: businesses and

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<sup>1</sup> The term “Indian” is used here as defined by the 1988 Brazilian constitution and used by Brazilian indigenous peoples themselves. The term “indigenous peoples” can be understood according to the definition in ILO Convention 169. Amnesty International uses both terms in this report.

<sup>2</sup> The government body responsible for administering the protection of Indians and their land. FUNAI is part of the Ministry of Justice.

prospectors, who wish to exploit the land’s natural resources; ranchers; landowners who, illegally or in good faith, have acquired title to indigenous land; logging companies, and the military, alleging national security interests, who seek to reduce and limit Indian territories in border areas. Such vested interests often have substantial economic and political lobbying powers which they can use to delay and interrupt resolution of land disputes.

Indigenous leaders campaigning to speed up the transfer of land have suffered death threats, violent attacks and killings, with little or no protection from the State and denial of the right to effective remedy<sup>3</sup>. During the long periods waiting for resolution of claims Indians are deprived of the essential resource for the realisation of their economic, social and cultural rights – their land.

The cases and situations documented in this report represent different examples of the complex reality faced by indigenous peoples in Brazil today. What unites them is that they are all situations that have arisen as a result of many decades of State inaction.

## **2. A legacy of broken promises**

### **The 500<sup>th</sup> Anniversary of exclusion**

The 500<sup>th</sup> anniversary of the arrival of the Portuguese in Brazil, on 22 April 2000, offered a unique opportunity for reflection on the country’s rich and complex social, racial and cultural legacy. The official celebrations angered many who felt that the opportunity was wasted, and that what took place instead was a superficial national and international marketing campaign that exploited indigenous peoples by using their images for publicity material. At the same time, the authorities denied many indigenous leaders and their representatives the right to participate in the celebrations and express their legitimate concerns regarding indigenous rights. In response to this, Indian organisations called an independent national conference in order to discuss a common agenda for indigenous issues.

On the day of the 500<sup>th</sup> anniversary itself, indigenous protestors and representatives of other civil society groups attempted to undertake a peaceful march into Porto Seguro, where the official celebrations were underway. They were stopped by military police dressed in riot gear who used tear gas, baton charges and rubber bullets to break up the march. Following national and international broadcast of the police intervention, the then President of FUNAI resigned in protest, saying “*I cannot remain in a government that performs acts of aggression against the organised indigenous movement*”<sup>4</sup>.

The exclusion and violence directed against Indian protestors and their supporters at

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<sup>3</sup> As specified by international law: The American Convention of Human Rights, Articles 25 and 8 (1), and International Covenant of Civil and Political Rights, Article 2 (3).

<sup>4</sup> Folha de São Paulo, 23 April 2000.

the 500<sup>th</sup> Anniversary was both representative and symptomatic of many years of systematic failure by the Brazilian State to recognise and uphold the rights of Brazil’s indigenous peoples<sup>5</sup>.

### **New hopes for change**

The 2002 election of a government, headed by Luiz Inácio Lula da Silva, and a party that was often seen as a traditional ally of the indigenous movement, gave cause for great hope of change. This was borne out by strong pledges made in the *Commitment to the Indigenous Peoples of Brazil*, the government’s manifesto for Indians issued in September 2002. This document recognised the many errors of the past, and set out a clear strategy for tackling the complex issues and conflict that for many years have left a large part of Brazil’s indigenous population exposed to human rights abuses:

*“The Brazilian government’s indigenous policy of the last decades requires profound and substantial changes in order to be able to respond to the needs of Indigenous peoples and the Brazilian community as a whole, and to construct an image of dignity and respect for ethnic plurality and human rights in the country”*.<sup>6</sup>

The manifesto also stated that the government-elect would need to show “lucidity, competence and resolve” and that definition and implementation of a “clear, democratic, objective and coherent Indigenous Policy” would be made a priority. Despite these promises and the strong support of Brazil’s indigenous peoples during the electoral campaign, more than halfway through its term in office there is still no sign that the federal government has developed a coherent strategy for attempting to resolve the many problems faced by Brazilian Indians. Although some demarcation and ratification of indigenous land has taken place, by failing to devise and implement a clear indigenous policy, the current administration is repeating and exacerbating the mistakes and omissions of past governments, and failing to live up to the very high expectations created by its own stated electoral commitments in addition to its international obligations. There has been widespread condemnation of this lack of progress by the indigenous movement. It was not until indigenous leaders occupied Congress in the capital Brasília, in April 2004, and demanded an audience with the president, that a meeting was granted to them, over 16 months after the new government came to power in January 2003.

### **An upsurge in violence**

In 2003, reported violence, including killings, against indigenous peoples and leaders escalated. CIMI, the church based *Conselho Indigenista Missionário*, Indigenist

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<sup>5</sup> For more information see the Amnesty International report Brazil: Police Violence and the 500th Anniversary, December 2000, AMR 19/20/00.

<sup>6</sup> “Commitment to the Indigenous Peoples of Brazil”, Coalition Lula for President, 2002.

Missionary Council, recorded 23 killings of Indians by the end of the year, the majority of these attributed to land disputes<sup>7</sup>. On 13 January, within two weeks of the inauguration ceremony for the new president, the internationally renowned Guarani-Kaiowá leader, Marcos Verón, was beaten to death in front of members of his family during an attempt to remove him from his ancestral land in the southern state of Mato Grosso do Sul, where he now lies buried. Also in early January, a 77-year-old Kaingang Indian, Leonardo Crespo, was kicked and beaten to death by a group of teenagers while he slept in Miraguaí, Rio Grande do Sul state. The authorities reacted swiftly, and those responsible for his killing, believed to have been racially motivated, were found guilty and sentenced in July the same year. Two months after the murder of Leonardo Crespo, in the north-eastern state of Pernambuco, Marcos Xukuru, leader of the Xukuru people, escaped from an ambush that left two men accompanying him dead. Marcos’ father, Chicão Xukuru, was shot dead by a gunman in 1998.

Although levels of violence against indigenous leaders declined in 2004, disputes over indigenous land led to further violence and human rights violations.

In January 2004, protestors invaded a Catholic mission in the indigenous territory of Raposa Serra do Sol in Roraima state, following a government announcement that indigenous land claims in the area would finally receive presidential approval. The protestors, apparently coordinated by local landowners, held missionaries hostage, blocked roads in the area and threatened further attacks against indigenous communities. The process of granting the land to the Indian inhabitants, pending only final presidential ratification, was postponed. Tension in the region remained high throughout the year and, in November, an armed group again reportedly coordinated by local landowners, attacked three indigenous communities in the territory, where 23 houses were burnt or destroyed.

The Amazon state of Rondônia was afflicted by tragedy in April when 29 men, who had been illegally mining on land belonging to the Cinta Larga indigenous people, were killed, allegedly by Indians. A few months prior to the massacre, in December 2003, an investigative commission formed by members of the Rondônia legislative assembly warned of impending violence and called for federal intervention, including the presence of the army, in order to prevent conflict and illegal mining in the region. This was not provided. In November, police announced they were charging 10 members of the indigenous community with the killings.

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<sup>7</sup> This figure was disputed by the President of FUNAI, who acknowledged 5 killings as a result of land disputes, and attributed the others to alcohol fuelled disputes and internal disagreements.



### “Indian is Land”

*“Indigenous groups, by the fact of their very existence, have the right to live freely in their own territory; the close ties of indigenous peoples with the land must be recognised and understood as the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival”<sup>8</sup>.*

Land has always been central to the well-being and survival of Brazil’s Indian population. As long ago as 1991, the Brazilian government coined the term “Indian is Land” in acknowledgement of the centrality of land rights to the realisation of their human rights. The right of indigenous peoples to their land is enshrined in the 1988 constitution, which defines these areas as being “lands traditionally occupied by Indians” and to which they have original and inalienable rights<sup>9</sup>. The constitution ordered the demarcation of all Indian lands by 1993.

Although the Brazilian constitution has provided the legal framework to fortify the struggle of Brazil’s Indians to regain and retain their land, and the overall area demarcated in their favour – 478,721 square km between 1992 and 2001<sup>10</sup> - has risen substantially in recent years, the constitutional goal of demarcating all lands remains distant even in 2005. Of 580 officially recognised indigenous territories in Brazil, 340 have been ratified, while 139 are still awaiting identification, the first stage in the process<sup>11</sup>. Despite this, the Minister of Justice has publicly promised to complete full demarcation and ratification of all outstanding Indian land by the end of 2006.

In 2004, the United Nations Committee on the Elimination of Racial Discrimination recommended that the Brazilian government complete the demarcation of all indigenous lands by 2007, expressing its concern that possession and use of indigenous land by indigenous peoples was threatened and restricted by recurring acts of aggression against them. The committee added: *“Furthermore, the Committee recommends that the State party adopt urgent measures to recognize and protect, in practice, the right of indigenous peoples to own, develop, control and use their lands, territories and resources”<sup>12</sup>.*

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<sup>8</sup> Mayagna (Sumo) Awas Tingni Community v Nicaragua, Inter-American Court of Human Rights, 31 August 2001, Para 149.

<sup>9</sup> Articles 231 and 232 define the constitutional rights of Indians, see Appendix.

<sup>10</sup> Homologados o registrados. IBGE – Indicadores de Desenvolvimento Sustentável – Brasil 2004

<sup>11</sup> Statistics available on the FUNAI website - [www.funai.gov.br](http://www.funai.gov.br)

<sup>12</sup> Conclusions and recommendations of the Committee on the Elimination of Racial Discrimination, Brazil, UN Doc, CERD/C/64/CO/2 (2004).

It is a long held principle of Brazilian law that Indians are “relatively incapable”<sup>13</sup> and therefore not able to fully exercise their civil rights. For this reason, paternalistic control over the rights and needs of indigenous peoples has always been monopolised by the State, specifically the federal government. The government organ that is officially responsible for implementation of indigenous policies is called FUNAI, *Fundação Nacional do Índio*, the National Indian Foundation<sup>14</sup>.

It therefore falls to the federal authorities to oversee both the implementation of indigenous land claims, and the protection of indigenous peoples during the time such claims are processed and after. However, while successive governments have committed themselves to ensuring the rights of Brazilian Indians, far too often these commitments have been compromised by short term political and economic interests.

Despite the many difficulties faced by Brazil’s indigenous peoples, there is one binding and positive factor that bodes well for their future. Their capacity for survival. In the middle of the last century there were predictions of imminent extinction when the indigenous population was estimated to have reached an all time low of 100,000. In 2005, this is now estimated to be some 370,000<sup>15</sup>. A recent development that has contributed to their survival is the growth and fortification of autonomous indigenous organisations during the 1990s, which have enabled them for the first time to become protagonists of their own struggle at a local, regional, national and international level. Up to 45 groups of “isolated” or “uncontacted” Indians are thought to live in Brazil, 24 of them in areas demarcated by FUNAI.

Even though Indians make up only 0.2-0.3% of the population, they have constitutional rights to 11% of the land. An opinion poll carried out by IBOPE for the NGO ISA, *Instituto Socioambiental*, suggests that most Brazilian people are not against this. In the poll of two thousand people carried out in 2000, a 68% majority thought that this area was enough, or even insufficient. Only 22% thought that it was too much land<sup>16</sup>.

### **Transfer of land – a laborious process**

The constitution obliges the federal government to transfer ancestral lands to Brazil’s Indian population, and makes it responsible for the land’s protection. The complex transfer process under which this is meant to occur is administrated by FUNAI and

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<sup>13</sup> Civil Code 1916, Indian Statute 1973. Proposals for reform of the Indian statute have been fiercely debated in congress since 1991.

<sup>14</sup> In the early 1990s responsibility for indigenous health and education were transferred from FUNAI to other organs of government.

<sup>15</sup> ISA – *Instituto Socioambiental*. Different methodologies cause wide variations in estimates of the Indian population. The IBGE – Instituto Brasileiro de Geografia e Estatística puts the number at over 700 000 – IBGE, *Indicadores de Desenvolvimento Sustentável, Brasil 2004*.

<sup>16</sup> *Pesquisa Nacional – IBOPE/ISA 2000*

includes identification, delimitation, demarcation, ratification and registration of lands. Identification is carried out by a technical team overseen by an anthropologist named by FUNAI. The President of FUNAI will, if appropriate, approve the study. A period of 90 days is left for interested parties to contest the report. It then falls to the Minister of Justice to approve or decline the identification study. If approved, the Minister of Justice will make an official declaration delimiting the area, and determining its physical demarcation. The final steps are ratification of the area by presidential decree, and its official registration<sup>17</sup>.

However, the procedure has proved painfully slow, taking years, if not decades, for claims to be settled. FUNAI has long been beleaguered by under-funding, corruption and internal problems, and consistently states that it lacks the money and manpower to carry out pending demarcations. In a letter shown to Amnesty International in August 2004 by a Guarani-Kaiowá leader, a FUNAI director wrote of his frustration at being unable to carry out the identification studies for a specific territory, due to a combination of inadequate financial resources and lack of staff:

*“Without anthropologists and environmentalists the constitution of a Working Group to identify any indigenous territory, whatever it may be, becomes unviable. It is with renewed effort that FUNAI is trying to find the human resources to cater for the land related needs accumulated over so many years in Mato Grosso do Sul”.*

The federal government’s *Commitment to the Indigenous Peoples of Brazil* made severe criticisms of FUNAI stating that it *“has been characterised by frequent omissions and lapses in the exercise of its functions”*. It also recognised that the body suffers from severe budgetary and internal problems, and stated that reforms and restructuring of FUNAI would be made a priority.

Despite such a stated commitment to radical change, Amnesty International is not aware of any government plans to restructure or increase funding for FUNAI. According to the independent think-tank INESC, FUNAI’s budget received an 8 percent cut in 2004. INESC described the budget earmarked for demarcations as “insufficient” and said of the budget earmarked for monitoring Indian land, *“Considering the amount of intrusion on indigenous land, and the failings of the staff and infrastructure of FUNAI, this value is at least comical, if not tragic”*<sup>18</sup>.

Criticisms of FUNAI by the indigenous movement are abundant. During a meeting of a coalition of indigenous groups at the Pan Amazonian Social Forum, that took place in Manaus in January 2005, FUNAI was the target of strong condemnation by

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<sup>17</sup> The process was set out by the 1973 Indian Statute. It is subject to modifications by decree, the most recent of which is Decree 1775 of January 1996.

<sup>18</sup> INESC *Instituto de Estudos Socioeconômicos*, A Política Indigenista 2003/2004: Um Olhar sobre o Orçamento. Nota Técnica Nº 86 abril 2004

prominent indigenous leaders<sup>19</sup>. At the time of publication of this report, Amnesty International had not received any reply to a letter sent to the president of FUNAI in September 2004, asking for information about strategies for resolving Guarani-Kaiowá land claims, among other questions.

In addition to structural and political delays associated with FUNAI, the transfer process is also delayed by difficulties in settling compensation payments for those who have acquired indigenous land in good faith. The Brazilian constitution only allows compensation for physical and material improvements made to the land, not for the value of the land itself. This often causes severe resistance by many landowners to proposed land transfers.

### **Legislative Proposal 188 – threatening to turn the clock backwards**

At the end of 2004, national NGOs sounded the alarm at a growing number of initiatives that appeared designed to restrict and even reverse some of the gains made by Brazil’s Indians in recent years. A special senate commission,<sup>20</sup> mandated to evaluate and report on the situation of indigenous peoples, drafted a legislative proposal<sup>21</sup> for regulating demarcation procedures that would set the clock back by decades. The draft legislation would annul all pending land demarcations, would make it illegal for land peacefully occupied by Indians to be demarcated and called for senate approval of all demarcations of indigenous territory. Fortunately, the proposal, condemned as unconstitutional by NGOs and described as a “stab in the back” by Indians in Mato Grosso do Sul, was withdrawn as a result of the public outcry.

The legislative proposal was drafted in contravention of the concept of free, prior and informed consent enshrined in Convention 169 of the International Labour Organisation, the only legally binding instrument of international law for the specific protection of indigenous peoples<sup>22</sup>. ILO Convention 169 was ratified by Brazil in July 2002, and incorporated into domestic law by the federal government in April 2004.

#### **“Foreigners in Our Own Country”**

The overwhelming sense of unease and insecurity for the future of Brazil’s Indians is summed up by this statement, made to Amnesty International by a prominent indigenous leader in January 2005:

*“...[we feel...] disappointment with the manner in which the indigenous question is treated in our country: the government has adopted the most perverse form of*

<sup>19</sup> Agencia Carta Maior, *Indígenas divulgam manifesto de repúdio ao Governo Lula*, 20 January 2005.

<sup>20</sup> *Comissão Temporária Externa do Senado Federal sobre Demarcação de Terras Indígenas*.

<sup>21</sup> Senate Legislative Proposal N°188, 2004

<sup>22</sup> Convention (No 169) concerning Indigenous and Tribal Peoples in Independent Countries, 27 June 1989.

*differentiated treatment, in that the indigenous question has been taken on by the Chamber of Foreign Relations and National Defence, where questions related to sovereignty are dealt with, which means that we are being treated like foreigners in our own country, and even as a threat to sovereignty. With this the hope of seeing our territories demarcated and ratified little by little has been substituted by fear.”*

The Chamber of Foreign Relations and National Defence, CREDEN, referred to here was set up by presidential decree in August 2003. Its mandate is to formulate government policy on “*matters related to the area of foreign relations and national defence*”.<sup>23</sup>

Among the eight specific areas of policy to be developed by this body are human rights and indigenous peoples. The others are drug trafficking and international crime, international defence and security cooperation, immigration, intelligence activities, border controls and peace operations.

In May 2004, a working group was established under the auspices of CREDEN in order to draw up proposals for a “new indigenous policy”. The working group does not include any indigenous leaders or members of civil society. Although FUNAI and the ministry for education are represented, the ministries for the environment, agrarian development and health are not. The federal police, air force, navy, army, Brazilian intelligence service, and ministries for foreign relations and defence are all members of the working group.

### **3. Violence and the struggle for ancestral land**

The struggle for Indian land has long been characterised by bloodshed and suffering. In 2005, one of the most extreme examples of the destitution and violence brought about by the historical failure of the Brazilian State to recognise and protect indigenous land rights, is that of the Guarani-Kaiowá, who despite being one of the most populous indigenous peoples in Brazil, have one of the smallest ratios of land per person for any Indian group in the country. Three groups of Guarani exist in Brazil – the Kaiowá, Nhandeva and Mbyá. 30,000 Kaiowá and Nhandeva live in Mato Grosso do Sul, the Guarani-Kaiowá having an estimated population of between 18,000 – 20,000, making them by far the most populous Guarani group in Brazil<sup>24</sup>.

#### **Destitution and violence: The Guarani-Kaiowá**

*“Land is sacred for us Kaiowá. Land is the essence of Kaiowá life for us. Land is the structure of life for us Guarani indigenous people”.*<sup>25</sup>

<sup>23</sup> Decree Nº 4.801, 6 August 2003.

<sup>24</sup> ISA – Encyclopaedia of Indigenous People, 2003.

<sup>25</sup> *Cacique* Rosalino Ortiz – letter to Survival International, December 2004.

*“In the Guarani and Kaiowá areas what happens? A lot of malnutrition. We have no land to plant on. Precisely because of this, there is misery and hunger in our land... We Indians have already taken a decision. If an eviction occurs in these areas in conflict, we will commit suicide. We will commit suicide because we don't mean anything to anyone”.*<sup>26</sup>

The majority of the **Guarani-Kaiowá** live in 27 officially recognised territories in the south of Mato Grosso do Sul state.<sup>27</sup> These are some of the smallest, poorest and most densely populated indigenous areas in Brazil: rural pockets of poverty surrounded by large soya and sugar cane plantations, and overcrowded urban reserves where life is plagued by malnutrition, ill-health, squalid living conditions, suicide, violence and alcoholism. Infant mortality in these indigenous areas has surged in recent years, reportedly largely due to hunger and malnutrition, with 64 recorded deaths for every 1000 children in 2004<sup>28</sup>. A federal deputy described the infant mortality rate as a “*real genocide of indigenous people in Mato Grosso do Sul*”<sup>29</sup>. The regional coordinator of FUNASA was reported to say that the high infant mortality rate was directly linked to social and economic structural problems, highlighting the Guarani-Kaiowá lack of land<sup>30</sup>.

Guarani presence in the area that is now Mato Grosso do Sul can be traced back hundreds of years. At the beginning of the last century, the now defunct Indian Protection Service (SPI) began to corral groups into official reserves. This practice continued and accelerated through the 1950s until the 1980s when, apart from a small number of communities, remaining Guarani-Kaiowá were expelled from their land by *grileiros*, land grabbers, as well as private companies and aggressive government sponsored agricultural development programs. With no other option, they moved into the already overcrowded official reserves. Many of them took jobs in sugar cane factories, working in conditions that reportedly often constituted slave labour<sup>31</sup>.

Denied their land, and not seeing any other alternative for survival, during the 1990s the Guarani-Kaiowá adopted a strategy of peaceful reoccupation of small plots of land on their traditional territories, called *tekoha*. During these reoccupations, those taking

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<sup>26</sup> Maria Regina de Souza in a public meeting with special senate commission on Indigenous affairs, February 2004.

<sup>27</sup> Eight of these territories are traditional State reserves, the remainder are areas demarcated or ratified since 1980. Almost all of these are contested. The Guarani-Kaiowá have unresolved claims to a further 91 territories.

<sup>28</sup> FUNASA.

<sup>29</sup> Diário MS, 27 January 2005

<sup>30</sup> Diário MS, 26 January 2005

<sup>31</sup> Survival International, written submission to the United Nations, 24 June 1999, E/CN.4/Sub.2/1999/NGO/1



part were often subjected to death threats or violent evictions by armed groups<sup>32</sup>. This direct action has resulted in gains or partial gains of a number of *tekoha*. The strategy continues today, driven by increasing desperation and frustration at the failure of successive governments to fulfil their promises to settle outstanding land claims. As a result of their actions, many Guarani-Kaiowá and their leaders have become increasingly vulnerable to the threat of violence. A member of the Federal Public Prosecutor’s Office in Mato Grosso do Sul expressed his concern to Amnesty International that some Guarani-Kaiowá involved in attempts to peacefully reoccupy land were exposing themselves to situations that were “*massacres waiting to happen*”.

### **The Killing of Marcos Verón**

On 11 January 2003, **Marcos Verón**, 72-year-old Guarani-Kaiowá *cacique*, leader, led a small group in an attempt to peacefully reoccupy a small area of the **Takuara** indigenous territory in Juti municipality, Mato Grosso do Sul, from which they had been expelled in 1953. This was the third time since 1999 that the Guarani-Kaiowá had attempted to reoccupy Takuara, located on a farm called Fazenda Brasília do Sul.

Despite initial assurances by representatives of FUNAI and the police that there would be no forced eviction of the group and that a peaceful agreement would be negotiated with the landowner, events quickly became violent. On 12 January, a group reportedly made up of farm labourers and hired gunmen gathered near the reoccupied area, and fired shots at a truck transporting Indians. 14-year-old Reginaldo Verón was hit in the leg by a bullet. Then, early in the morning of 13 January, a group of some 30 men attacked the encampment. The events described below were witnessed by Marcos Verón’s son Ladio, “Ava Taperendy’ i”, himself badly beaten and threatened with death in the attack:

*“It was 3:30 in the morning when we heard the noises of cars, which sounded to us as if they were far away, but in fact they were coming with the lights off. Already getting near to where we were many of them began to get out of their cars and come into the middle of the field. It was then that one of them began to fire in our direction, and the cars began to turn on their lights. You could only hear firecrackers, bangs and gunshot going off in the direction of our tents. Children and women were crying with desperation (...) while this was going on they grabbed the cacique Marcos Verón from the other tent and began to beat him, and kick him until he fell on the ground, after falling on the ground each one of them kicked the cacique, who was groaning in agony on the ground. I shouted out for them to stop beating him because he is old and retired (...) then I saw my father being struck with the rifle butt on the head and his face for the last time. Until he wasn’t moving any more...”*<sup>33</sup>

<sup>32</sup> Amnesty International Urgent Action; AI Index: UA 09/07 AMR 19/01/97 10 January 1997

<sup>33</sup> Document signed by 71 Guarani-Kaiowá and presented to Amnesty International.

Marcos Verón and his son were abandoned by the side of the road by the men who attacked them. Marcos Verón was taken to hospital where he died as a result of his injuries. Thanks to an immediate response and investigation into the attack by the Federal Public Prosecutor’s office in Dourados, the arrests of several men quickly took place, while arrest warrants were issued for others. Suspected participants in the attack have been charged with a variety of crimes including murder, attempted murder, kidnapping and torture. The cases are expected to come before the courts later this year.

Marcos Verón lies buried at Takuara. His funeral was attended by representatives of the indigenous and human rights movements from across Brazil. His death had wide international repercussions - in 2000 he had travelled across the globe to campaign on behalf of Brazilian Indians in Europe. The peaceful occupation of Takuara continues in 2005, as the family of Marcos Verón and other Guarani-Kaiowá camped there await final demarcation and ratification of the territory.

Marcos Verón is not the first internationally renowned Guarani leader to have been killed as a result of efforts to secure land for his people. In 1983, **Marçal de Souza “Tupã’Y”**, an outspoken advocate of indigenous rights who represented Brazil’s Indians in an audience with the Pope during his 1980 visit to Brazil and who spoke in defence of all the world’s minorities at the United Nations, was shot dead in front of his home in Campestre, Antonio João municipality. Although a local landowner and estate manager were charged and tried for the killing after long delays, no one was ever convicted. As more than 20 years have passed since his murder, no one will ever be brought to justice, as the crime can no longer be tried under Brazilian law<sup>34</sup>.

Nor is Marcos Verón the only Guarani-Kaiowá to have been killed in recent years when peacefully reoccupying ancestral land. In 2001, a young Guarani-Kaiowá, **Samuel Martin**, was shot and killed during one such attempt at Ka’a Jari in Coronel Sapucaia municipality. According to information received by Amnesty International, although the crime was investigated at the time, no one has ever been charged with this killing.

The impunity surrounding the killing of Marçal de Souza, and the killing of Samuel Martin, paved the way for the death of Marcos Verón. It is therefore imperative that all those behind his killing, including whoever ordered the violent attack and expulsion of the Guarani-Kaiowá camped at Takuara on 13 January 2003, be brought to justice.

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<sup>34</sup> The crime has expired under the Brazilian statute of limitations Article 109, Brazilian Penal Code.



### **The struggle for land: hope amid destitution**

During August 2004, Amnesty International visited a number of Guarani-Kaiowá communities and peaceful occupations of ancestral land in Mato Grosso do Sul. In **Passo Piraju**, Dourados municipality, and **Guyra Roka**, Caarapó municipality, Amnesty International visited two communities of Guarani-Kaiowá living on the roadside in shacks covered with black plastic. These groups have taken the decision to live in pitiful conditions beside their former territories in the hope that their presence will speed up the demarcation process. In September, a month after Amnesty International visited Guyra Roka, the group of Indians living there peacefully reoccupied a small area of their ancestral land. A court order ordering their eviction was overturned by the regional federal court in December, and they remain on the site of their reoccupation today.

In **Cerro Marangatú**, Antonio João municipality, Amnesty International was shown the crops planted by a group of 90 Guarani-Kaiowá families who have been waiting for demarcation of their land since an official study was carried out in 1999. The demarcation was finally carried out in October 2004, and the Indians who for years had been crammed into an 11 hectare area, occupied a larger proportion of the demarcated territory in anticipation of its final ratification. They planted the area with crops of corn, manioc and potatoes. Unexpectedly, and contrary to numerous recent judicial rulings that allowed other groups to stay on reoccupied land, in January 2005 the regional federal court ordered their eviction from this larger area. In response to the eviction order, the community issued a statement saying:

*“We heard it said that the police are coming with a tractor to destroy everything. We would like to know who is going to feed our children... We would like to let the police know we are not leaving. This is final. We are not leaving the land alive”.*

After strong national and international condemnation of the eviction order, FUNAI reportedly entered into negotiations with the landowner. The federal public prosecutor’s office lodged an appeal in favour of the Guarani-Kaiowá.

In Japorã municipality, while visiting the recently reoccupied **Yvy Katu** area, Amnesty International heard elders and leaders who were still mourning the death of two young men, Estevão Velasque and Nelson Rodrigues, who had committed suicide in the previous days.

### **A final desperate cry for help: Guaraní Suicides**

In the late 1980s and early 1990s a macabre and tragic phenomenon made the Guarani-Kaiowá, and their neighbours the Guarani Nhandeva, a worldwide symbol for the desolation and annihilation of indigenous peoples. Young Nhandeva and Kaiowá, mainly teenage girls and boys, began to take their own lives in numbers that have increased alarmingly over the years. 305 such suicides took place between 1986

and 1999. The numbers continue to rise, according to the government health agency FUNASA, which recorded 132 suicides during the period January 2001 to July 2003.

Although there is no single reason that explains the shocking numbers of Nhandeva and Kaiowá suicides, the Guarani-Kaiowá have repeatedly expressed their belief that the vicious circle of desperation brought about by denial of their access to land is a fundamental cause of suicide among them. A statement, sent by members of the Guarani-Kaiowá community living in the Yvy Katu territory to the authorities, clearly states how they believed that a governmental failure to deliver on promises regarding land demarcation contributed directly to the suicide of the two young men in August 2004:

*“Regarding two friends who began the struggle for the reoccupation of the Yvy Katu tekoha, in November 2003. Estevão Velasque, 27 and Nelson Rodrigues, 26. Two friends who believed in the final victory of demarcation of the tekoha, after negotiation with the courts in February 2004.*

*In all the meetings they always asked “so what’s happening with the situation of our area”? It seemed that they were anxious to hear the end of the story, which would be total demarcation of the area. In July at a meeting, the question was the same when they affirmed that they were not going to give up the struggle, since in August the agreed deadline was approaching and if possible they would be ready to die if it was necessary, since someone always has to die for a just cause, only then do the courts remember to get on with the process.*

*Then finally August came and the media, which always throws bad news at indigenous people, said that perhaps the demarcation would take another year, or even two years or more. We believe that all this gave them a great shock, which was when they decided to commit suicide - Estevão Velsque on the night of the 7th August 2004, and Nelson Rodrigues on the 8<sup>th</sup> of August 2004, in the Yvy Katu camp”.*

Overall, the outlook for the Guarani-Kaiowá is bleak. Killings of leaders, threats of evictions, precarious housing, poverty, rising infant mortality and suicide rates all paint a harrowing picture. It is clear that without a strong and strategic commitment on the part of the authorities to resolving the land claims of the Guarani-Kaiowá, there is every indication that the situation will deteriorate even further.

Fortunately, there are also some positive signs. At the end of last year, the long contested dispute for the **Panambizinho** territory in Dourados municipality was finally resolved. The struggle for Panambizinho dates back to 1945, when the federal government settled families of migrant workers on Guarani-Kaiowá land. Presidential ratification of the indigenous area took place in October 2004, and in November ownership papers were handed over to the community of 70 families during an official ceremony attended by the Minister of Justice, the President of FUNAI and the

Governor of Mato Grosso do Sul. Amnesty International hopes that this will not prove to be an isolated example.

### **Raposa Serra do Sol: Ratification Postponed**

A region that has been the focus of substantial national and international attention in recent years is the Raposa Serra do Sol indigenous area located in the north-east of Roraima state near the border between Brazil and Venezuela. This large area<sup>35</sup> contains the ancestral lands of the Ingarikó, Macuxi, Patamona, Taurepang and Wapichana indigenous peoples. The five groups together number an estimated 15,000<sup>36</sup>, although the Macuxi are by far the most numerous. For more than 30 years, these Indians have been campaigning for official recognition of their entitlement to ancestral lands.

During this period, they have continuously faced threats, attacks and violent evictions in their struggle for land rights. Failures by successive governments to ensure their entitlement to their land have left them vulnerable to attacks and land invasions by illegal settlers, rice cultivators, loggers, and prospectors, among others. The dispute has seen over 20 indigenous people killed, while hundreds more have been beaten, their homes and livestock destroyed by local landowners, settlers and members of the military police. Human rights defenders working in favour of the Indians have been subjected to threats, intimidation and violence.

On 2 January 2003, Aldo da Silva Mota, a leader of the Macuxi, was killed in Raposa Serra do Sol. An initial autopsy, carried out locally, claimed that he died of natural causes. However, following protests from indigenous groups, a second autopsy was carried out in Brasília. This stated that he had been shot in the head, while his hands were in the air, most probably when kneeling on the ground. It indicated that he was the victim of a probable execution. Three men have been charged with involvement in the killing, and will go to trial in the near future. They have not been detained.

During a visit to Brazil in November 2003, Amnesty International’s Secretary General Irene Khan met with both the President, Luiz Inácio Lula da Silva, and the Minister of Justice, Márcio Thomaz Bastos. During these meetings, she raised the issue of the violence affecting Indians in Raposa Serra do Sol among broader concerns related to indigenous peoples. Both the President and the Minister of Justice explained that delays in ratification of the territory were the result of a deliberate government policy

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<sup>35</sup> Just under 1.7 million hectares, roughly 7% of the total area of Roraima state.

<sup>36</sup> Conselho Indígena de Roraima (CIR) website: [http://www.cir.org.br/raposa\\_geral.asp](http://www.cir.org.br/raposa_geral.asp)

intended to guarantee the safety and rights of both Indians and settlers<sup>37</sup>, in order to ensure a lasting and safe resolution. President Lula further stressed that international pressure on the previous administration had forced them to adopt measures that failed to take into account these requirements.

For this reason many were surprised when, on 23 December 2003, having given no prior warning or apparent provisions for avoidance of conflict in the area, the Minister of Justice announced imminent presidential ratification of the demarcation process to officially declare Raposa Serra do Sol as one continuous indigenous area. The ratification had been pending since 1998. Over the years, members of the Roraima state government, landowners and elements in the armed forces have tried many ways to block the process of demarcation.

On 6 January 2004, following the announcement of the planned ratification, a group of settlers invaded a Catholic mission in the indigenous area. They held three missionaries hostage for three days, reportedly subjecting them to psychological torture and humiliation. The settlers, who were reportedly coordinated by local landowners, also blocked roads and threatened further attacks against Indians. The ratification was postponed, and subsequently further delayed by legal appeals. Continued legal wrangling centered on whether Raposa Serra do Sol should be ratified as one whole continuous area, or as a series of multiple areas interspersed by non-indigenous settlements.

On 23 November 2004, during a visit to the region by the Federal Minister of Justice, Márcio Thomaz Bastos, three indigenous settlements of the Macuxi Indians were attacked by a group believed to be made up of rice cultivators and indigenous people associated with them. During the attack, 37 houses were destroyed and one Macuxi Indian was injured by bullets. The attacks further increased the tension between indigenous peoples and opponents of the declaration of Raposa Serra do Sol as an indigenous area.

In December 2004, the Inter-American Commission of Human Rights of the OAS issued precautionary measures, *medidas cautelares*, in response to the November attacks, calling for investigations into them and protection of Indian communities in Raposa Serra do Sol<sup>38</sup>. So far, no protection has been provided. A delegation of the CIR, *Conselho Indígena de Roraima*, Indigenous Council of Roraima, had already

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<sup>37</sup> Non-indigenous people who have established themselves on indigenous territories and who are regarded as invaders by the Indian community.

<sup>38</sup> In urgent cases, the Commission may request that precautionary measures be taken by member states to protect persons from irreparable harm. The state is given some time to respond to the measures and must clarify what measures they have undertaken in order to avoid irreparable harm to the individual.

presented a report about the situation to the Inter-American Commission in March 2004.

At the beginning of 2005, final ratification was still subject to legal disputes in the federal supreme court, *Supremo Tribunal Federal*, STF.

#### **4. Impunity and Insecurity**

Impunity for human rights violations in Brazil is pervasive and persistent. This is very often the case with regard to the killings of Brazilian Indians. An attack on indigenous peoples by settlers that caused particular national and international outrage was the Tikuna massacre, which took place in 1988. Shrouded in impunity for many years, there were hopes that justice had been served with the sentencing of the 14 men believed responsible in 2001<sup>39</sup>. They were convicted on a charge of genocide, only the third such conviction in Brazilian legal history. However, a recent ruling overturned the sentence of and acquitted the man convicted of ordering the killings, and reduced the sentence of all others involved.

In addition to the violence that is so often generated in the context of land disputes, Indians also suffer when there is a failure by the State to protect them from invaders on their land, as was the case in the Cinta Larga Roosevelt territory in 2004, or often when there are specific security needs, as in the cases of the Truká and Xukuru in Pernambuco, that go unheeded.

#### **The Tikuna Massacre – Still Waiting for Justice**

It is over 17 years since 14 Tikuna Indians were massacred at the mouth of Capacete Creek, just outside the São Leopoldo indigenous area in the state of Amazonas. Hopes that the 2001 conviction of the man believed to have ordered the killings would be a crucial victory against impunity proved to be short lived. In October 2004, a federal court overturned the sentence of the timber merchant accused of having ordered the massacre, and reduced the sentences of all those convicted of participating in the attack, including those tried *in absentia*.

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 report the theft of a bull. They were apparently picnicking and singing when they were attacked by a group of gunmen, local settlers allegedly hired by the timber merchant, who had a long running dispute with the Tikuna about the illegal extraction of timber on their land. After the first shots were

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<sup>39</sup> Only six of the men were taken into custody. The remaining 8 were tried *in absentia*.

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 injured. Most of those killed had tried to escape by boat. The bodies of 10 of the victims, apparently swept away by the river, were never recovered.

After so many years have passed, the failure by the authorities to bring to justice those who ordered the killings can only reinforce the insecurity felt by indigenous peoples in Brazil. It serves to strengthen an unfortunate and potentially lethal message that Indians can be killed with impunity. The Tikuna people continue to be threatened and harassed in 2005.

### **Tragedy forewarned - The Cinta Larga**

The Cinta Larga live in 34 communities spread out over several indigenous areas in the border region of Mato Grosso and Rondônia states in north-west Brazil. At present, they number about 1300, compared to an estimated 5000 in 1968. Confrontations between the Cinta Larga and intruders on their land are on record as long ago as the 1920s. Over the years their land has been invaded by rubber extraction companies, loggers and diamond prospectors. Such invasions have a bloody history. In 1963, a Cinta Larga settlement was attacked by men acting on the orders of rubber plantation owners, an incident which has become known as the massacre of the 11<sup>th</sup> parallel and during which eyewitnesses described seeing a woman hung up and cut in half while still alive. This massacre resulted in international condemnation of the Brazilian state for violating the rights of indigenous peoples. In 1969, FUNAI made “official” contact with the Cinta Larga for the first time.

In 1999, large deposits of diamonds were discovered in the Cinta Larga’s “Roosevelt” area. In 2000, illegal prospectors, *garimpeiros*, entered the territory in search of diamonds. The resulting tension and conflict between the Cinta Larga and the prospectors led to the killings of two prominent leaders, Carlito Cinta Larga in December 2001, and César Cinta Larga in April 2002.

In March 2002, the federal authorities initiated a joint operation to remove some 2500 prospectors from the area involving teams of both federal police and Indians. However, only a month later this cooperation was suspended when four Cinta Larga leaders were arrested by the federal police. The leaders, who were all well known opponents of the prospectors, were taken into custody on suspicion of several alleged crimes, but were released without charge after six days.

In 2003, an intervention by the Federal government once more led to the expulsion of prospectors, which was completed by August of that year. Nevertheless, tension



between the Cinta Larga people and the prospectors continued to build. Many of the latter continued with their activities despite the expulsions. In December of that year, an investigative commission formed by members of the Rondônia legislative assembly warned of impending violence and called for federal intervention, including the presence of the army, in order to prevent conflict and illegal mining in the region. This was not provided.

On 7 April 2004, a group of armed Cinta Larga Indians attacked prospectors who were illegally mining diamonds in the Roosevelt area, killing 29 prospectors. An investigation was opened by police, who announced in November last year that 10 members of the Cinta Larga indigenous community would be charged with the killings. Had the Brazilian government taken heed of the warning of the investigative commission and acted swiftly, this tragedy might well have been avoided.

An apparent revenge attack took place within weeks. On 18 May, 14 year old **Moises Cinta Larga**, was shot and killed inside the Roosevelt area. An eyewitness who was accompanying him said that they were ambushed by a group of men wearing hoods to conceal their identity. Within a week of the incident, federal police arrested three prospectors in connection with the killing.

### **The Xukuru of Pernambuco**

Some 10,000 Xukuru people live in the north-eastern coastal state of Pernambuco in an area of 27,000 hectares near the town of Pesqueira<sup>40</sup>. Although this land was demarcated in their favour in 1992, in 2005 they occupy only part of it, as some compensation claims for farmers on the land have still not been fully settled. Final registration of the territory has not yet taken place.

Amnesty International has documented a long history of violence against Xukuru leaders committed in the context of their campaign for land rights. In May 1998, nationally renowned *cacique* **Chicão Xukuru** was shot and killed. Shortly after this, in April 2001, **Chico Quelé**, another leader, was shot dead. Most recently, on 7 February 2003, the current *cacique* of the Xukuru people and the son of Chicão Xukuru, **Marcos Luidson de Araújo**, known as “Marcos Xukuru”, and his 12-year-old nephew escaped from an apparent ambush in which two other indigenous men, **José Ademilson Barbosa da Silva** and **Josénilson José dos Santos**, were killed.

Over the years, Amnesty International has spoken to NGOs, members of the federal Public Prosecutor’s office in Brasília and successive federal governments who have

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<sup>40</sup> In 1999 6363 Xukuru were registered. ISA – Encyclopedia of Indigenous Peoples.

informed the organisation that there has been a pattern of discrimination against the Xukuru, and a continued failure by regional federal representatives in Pernambuco to provide them with access to justice. Amnesty International has been repeatedly informed that investigations and prosecutions of attacks and killings of Xukuru leaders are consistently hampered by prejudice and vested interests.

According to information received by Amnesty International, the investigation into the attack on Marcos Xukuru and his companions followed this pattern. Although the subsequent federal police investigation identified two men implicated in the attack, only one was charged. Amnesty International has also been informed, despite the fact that Marcos Xukuru was lucky to escape with his life, that the Pernambuco federal public prosecutor’s office accused him of provoking the attack, and that no charges for his attempted murder were ever filed. One man has been charged with the murders of Adenilson Barbosa da Silva and Josélton José dos Santos.

In October 2002, as a result of persistent threats against them, the Inter-American Commission on Human Rights had called on the Brazilian authorities to implement precautionary measures by supplying Marcos Luidson and his mother with effective protection, but this was not done.

### **Previous Killings of Xukuru Leaders**

Marcos Luidson de Araújo’s father, **Francisco de Assis Araújo**, known as “**Chicão Xukuru**”, the charismatic *cacique* who headed the Xukuru’s peaceful reoccupation of their land in the 1990s, was shot and killed by a gunman when visiting his sister in Pesqueira in 1998. As well as campaigning on behalf of the Xukuru, he also was coordinator of a regional indigenous rights group, *Articulação dos Povos Indígenas do Nordeste, Minas Gerais e Espírito Santo*<sup>41</sup>. Although there was always substantial evidence to indicate that the killing of the *cacique* was a direct result of his struggle for recognition of Xukuru land rights, federal police investigating his murder initially only followed lines of investigation that discredited this version of events. This included allegations that he had been killed as the result of an internal Xukuru power struggle, or the victim of a crime of passion. Only after substantial national and international pressure was brought on the authorities did they investigate his killing in the context of his work campaigning for land.

Hopes of seeing those responsible brought to justice faded when the gunman believed to have carried out the shooting was killed in the state of Maranhão in August 2001, while the farmer accused of ordering the attack, José Cordeiro Santana, committed suicide in suspicious circumstances in a federal police cell within weeks of his arrest in May 2002. However in November 2004, Rivaldo Cavalcante Siqueira, was

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<sup>41</sup> Articulation of Indigenous Peoples of the Northeast, Minas Gerais and Espírito Santo, APOINME.



sentenced to 19 years in prison for acting as an intermediary between the two men. Not only is this an important victory against impunity, it also offered conclusive proof that Chicão Xukuru was killed in order to stop his campaign for Xukuru land rights.

On 23 April 2001 another Xukuru leader, **Francisco de Assis Santana**, known as Chico Quelé, was shot dead in Pesqueira while on his way to meet members of FUNAI. Once again, Amnesty International is concerned that the investigation into his killing fits a pattern of discrimination against the Xukuru by the federal authorities in Pernambuco. In 2002, the federal police issued arrest warrants for two Xukuru men, one of them the *vice-cacique*. The Xukuru community and lawyers working for CIMI immediately took up the defence of these two men, arguing that the authorities were mistaken in their investigation, and that this was the result of an attempt to protect the real perpetrators of the crime. One of the men was arrested and held in a high security prison while the other went into hiding. An initial attempt to overturn the two arrest warrants, through *habeus corpus*, was rejected by the regional federal court in Recife. However, an appeal against this decision was lodged, and in July 2003 the *Supremo Tribunal Federal*, federal supreme court, in Brasília, overturned the arrest warrants and ordered the release of the men. Despite this decision, it appears that the state judicial authorities intend to bring them to trial in the near future.

#### **Protection of leaders at risk: a persistent failure to reach a solution**

The failure of the Brazilian authorities to investigate and identify the authors of the many death threats against him, and the failure to provide effective and suitable protection for Marcos Xukuru and his family left him exposed to the attack which took place in February 2003. Despite renovation of the *medidas cautelares*, requesting his protection by the Inter-American Commission of Human Rights, this was not provided. Although the Xukuru made a proposal setting out measures for protecting the whole community, and made suggestions as to individuals who could provide police protection for Marcos, they did not reach an agreement with the authorities.

According to reports, a special team of Pernambuco federal police assigned to protect Marcos and his mother in November 2003 instead used their presence in Pesqueira as an opportunity to question and intimidate members of the Xukuru community. The question of insecurity continues to be grave, and Marcos Xukuru continues to be at risk, receiving at least two explicit death threats in 2004.

For years, the Xukuru and others have denounced their treatment at the hands of the Pernambuco federal police as hostile, and against their interests. For this reason, they asked for protection for Marcos Xukuru and his mother to be provided by police from another state, or different police force<sup>42</sup>. So far, the authorities have failed to provide

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<sup>42</sup> Brazil has four police forces: the federal police and the federal transport police responsible to the Ministry of Justice; and two state forces – the military police and the civil police.

him or his mother with any effective protection. The Xukuru community continue to highlight what they perceive as a failure by the authorities to address their needs as a group. According to information recently received by Amnesty International, there are plans for an independent organisation to draft a security proposal for the Xukuru.

### **Harassment of Human Rights Defenders in Pernambuco**

Within a pattern of harassment, threats and attacks against human rights defenders that occur across Brazil, in recent years there has been an escalation in what appear to be judicial attempts to intimidate human rights defenders working for justice for killings of Xukuru leaders and in defence of the Xukuru community in general. This intimidation, principally directed against lawyers and staff members of CIMI, has taken the form of lawsuits brought by federal police officers, accusing CIMI staff of making defamatory statements in the course of their work. While Amnesty International recognises that individuals have the right to defend themselves against malicious statements, the misuse of such laws in order to restrict freedom of expression and the legitimate work of human rights defenders, is unacceptable. Article 12 of the United Nations declaration on human rights defenders states:

*“The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.”*<sup>43</sup>

There has also been a recent attempt by Pernambuco’s military police to intimidate human rights defenders working in the state. On 16 September 2004, Dominici Mororó, a lawyer who works for several organisations including CIMI, the Pastoral Land Commission, CPT, and the National Movement of Human Rights, MNDH, was pursued by men on motorcycles and in a car as he attended meetings in Recife. Suspicious, he called the police, who acted swiftly to arrest three of his pursuers, who were revealed to be military police officers working in the military office of the Pernambuco state government. The men were in possession of revolvers, surveillance equipment and a dossier that contained detailed information not only on Dominici Mororó, but also numerous other human rights defenders working in the state. The incident has been reported to the federal authorities by several NGOs and the Brazilian Lawyer’s Association as well as to the United Nations Special Representative on Human Rights Defenders, Hina Jilani. Amnesty International is not aware of any action taken against the three police officers, who were released shortly after their detention.

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<sup>43</sup> Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. Geneva Assembly resolution 53/144, 8 March 1999.

### **Caught between “Crocodiles and Lions” - The Truká**

The Truká indigenous territory of nearly 6000 hectares lies deep in the state of Pernambuco, near the border with Bahia. It is situated on an archipelago called the Ilha de Assunção, on the São Francisco river in the municipality of Cabrobó. Approximately 3000 Truká live in the territory, which they began to reoccupy in the mid 1990s. Although the demarcation process is underway, this has been stalled since 2002, reportedly due to threats made against the technical team working in the area at the time. The situation faced by the Truká is particularly problematic due to substantial illegal cultivation of marijuana in the region. As a result of this, there is a strong presence of heavily armed organised criminal groups in the territory.

When Amnesty International attended a public meeting in the Truká territory in August 2004, its delegate heard a leader state that the community was caught between the “crocodiles and the lions”, meaning that it is caught in the crossfire between the criminal gangs involved in the drug trade, and the police. Many of those present cried as they spoke of the violence and fear that they suffered, their sadness at the numbers of families leaving the territory because of the violence, and their feelings of vulnerability towards both police and criminals. Representatives said that the territory was “*in the hands of whoever wants to dominate through the use of firearms*” and that the police, when they came in “*instead of going after criminals, they’re beating up people who have nothing to do with them*”. They admitted that a tiny minority of the Truká, no more than a few known individuals, were involved in illegal criminal activity.

The problem faced by the Truká mirrors the experience of many poor urban communities in Brazil where there is a proliferation of arms and an illegal drug commerce. On the one hand, the community suffers from the presence of heavily armed drug traffickers and high levels of violence, while on the other they are collectively labelled as criminals by the authorities.

### **The Killing of José de Nó and Nilson Felix**

On 4 January 2001, police officers and unknown persons became involved in a shootout during a military police operation in Cabrobó. During the incident, two police officers were killed, and a Truká bystander, **Nilson Felix**, injured. Nilson Felix was initially taken to the local hospital for treatment. Due to the gravity of his injuries, it was decided to transfer him by car to nearby Petrolina, accompanied by his father, **José de Nó Felix**, a nurse and a driver. Witnesses say that a group of military police in balaclavas stopped the car, and abducted the two Indians, ordering the nurse and the driver to return home. This was immediately reported to the federal police by the Truká. After three days of searches, the mutilated and badly burnt bodies of the two men were found in a neighbouring municipality. On 8 January, representatives of the Truká, including the current cacique **Aurivan dos Santos Truká**, travelled by bus to

denounce the killings to the state authorities in Recife. During their journey, the bus was boarded by military police officers who reportedly warned them not to speak to anyone about what had happened, or “someone would blow their heads off”. Although an investigation into the killings was opened at the time, Amnesty International is not aware of any charges brought in relation to the crimes.

### **Abandoned by the State**

For many years, the Truká have made visits to the federal government in Brasília to appeal for assistance in resolving their security situation. In early 2003, a federal commission that included the federal Human Rights Secretary travelled to Cabrobó for a meeting with the Truká. However, apparently for security reasons, he did not enter the indigenous territory, and the meeting proved inconclusive. Further attempts by the community to arrange meetings with the federal authorities have so far failed.

The insecurity of the Truká is exacerbated by the lack of any official state presence inside the territory. FUNAI and FUNASA have offices in Cabrobó, but reportedly refuse to send their agents into the territory, alleging that it is too dangerous.

### **The duty to protect and ensure rights with due diligence**

Under Article 1 of the **American Convention on Human Rights**, ratified by Brazil in 1992, States have a duty to ensure the exercise of human rights to all persons within their territory or jurisdiction. The Inter-American Court of Human Rights outlined what that obligation involves in a judgment on a case of forced disappearance in Honduras in which the identity of those responsible was not known.<sup>44</sup> The Court used the concept of “due diligence” to describe the degree of effort a State must make to comply with its obligation to ensure the exercise of human rights, even in cases where the abuses have been committed by people who have no connection with the State:

*"An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention."*

According to the Court, acting with "due diligence" means that the State must take reasonable steps to prevent human rights violations, use the means at its disposal to carry out serious investigations, identify those responsible, impose the appropriate punishment and ensure that the victim receives adequate reparation<sup>45</sup>.

<sup>44</sup> Inter-American Court of Human rights, Velésquez Rodríguez, 29 July 1988, para 172.

<sup>45</sup> Ibid., para 174.

## **5. Conclusion**

In 2005, indigenous peoples in Brazil face an uncertain future. Amnesty International has found that while there have been some advances in respect for their rights, considerable numbers of Indians still suffer as a result of discrimination, violent attacks, killings and impunity. In addition to this, those denied access to their land are trapped by destitution and chronic poverty. In situations where their land is legally demarcated, very often the State is failing to provide them with protection.

Indigenous peoples appear to be low on the list of priorities for an administration that is attempting to juggle many competing demands. As a result, they are increasingly vulnerable in a climate where the threat of violence is ever present. The considerable advances they have made since the 1988 constitution are in danger of being lost. A powerful and increasingly vociferous lobby is calling for a reduction in their rights. Coupled with the failure of successive governments to implement a coherent strategy for ensuring recognition and protection of their rights, their safety and even their survival, is at risk.

It is essential that the federal government fulfil its electoral promises and meet its international obligations. Without a strong strategic commitment by the authorities to guaranteeing Indian safety, resolving land disputes and ratifying outstanding claims to land, further violence and steps backward appear inevitable.

## **6. Recommendations**

### **General**

The Brazilian Government must give urgent priority to setting out clear policies and specific strategies for tackling the persistent human rights issues and land problems that affect Brazil's indigenous population, in line with its international and constitutional obligations, and as set out by its electoral manifesto document *Commitment to the Indigenous Peoples of Brazil*. These must be developed in full consultation with the indigenous movement, as prescribed in international law by the ILO Indigenous and Tribal Peoples Convention 169. Priority should be given to a full review of the structure, resources and functions of FUNAI.

### **Justice**

All cases of violent attacks and other human rights 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, in line with the Brazilian Government's commitments under the American Convention on Human Rights and other international standards. Collusion between law enforcement officials and private parties instigating or perpetrating abuses should be fully investigated. The

Brazilian government must ensure that justice is equally available to all those living within its borders, irrespective of ethnic origin or the remoteness of the areas in which they live.

### **Protection**

The Brazilian Government should uphold the principle enshrined in Article 18 of the ILO Indigenous and Tribal Peoples Convention 169, in efforts to prevent abuses against indigenous peoples in the context of land or resources disputes: “Adequate penalties shall be established by law for unauthorised intrusion upon, or use of the lands of the peoples concerned, and governments shall take measures to prevent such offences”. The authorities should take steps to ensure that the elaboration and implementation of all indigenous security and protection schemes is undertaken in full consultation with the community at risk. The Brazilian government should ensure that any private bodies or individuals, such as commercial enterprises, which have contact with Indians, fully respect their human rights. If abuses do occur, the authorities should ensure that they are promptly investigated and the perpetrators brought to justice. As newly contacted or isolated indigenous groups are particularly vulnerable, special care must be taken to protect them against human rights abuses.

### **Resolution of Land Disputes**

The speedy and just resolution of unresolved indigenous land claims could have a major impact on reducing levels of poverty, violence and other abuses against indigenous peoples. This matter should be given immediate priority by the Brazilian Government, in line with its constitutional obligations, international law, public statements and commitments made in the government’s own *Commitment to the Indigenous Peoples of Brazil*. Special consideration should be given to recommendations made in relevant rulings of the Inter-American Court of Human Rights, such as the *Awas-Tingni v Nicaragua* decision, and by bodies such as the United Nations Committee on the Elimination of Racial Discrimination.

## APPENDIX I

### Excerpts from the Constitution of the Federative Republic of Brazil, 1988<sup>46</sup>.

#### Chapter VIII - Indians

**Article 231.** Indians shall have their social organization, customs, languages, creeds and traditions recognized, as well as their original rights to the lands they traditionally occupy, it being incumbent upon the Union to demarcate them, protect and ensure respect for all of their property.

Paragraph 1 – Lands traditionally occupied by Indians are those on which they live on a permanent basis, those used for their productive qualities, those indispensable to the preservation of the environmental resources necessary for their well-being and for their physical and cultural reproduction, according to their uses, customs and traditions.

Paragraph 2 – The lands traditionally occupied by Indians are intended for their permanent possession and they shall have the exclusive usufruct of the riches of the soil, the rivers and the lakes existing therein.

Paragraph 4 – The lands referred to in this article are inalienable and indisposable and the rights thereto are not subject to limitation.

**Article 232.** The Indians, their communities and organizations have standing under the law to sue to defend their rights and interests, the Public Prosecution intervening in all the procedural acts.

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<sup>46</sup> Constitution of the Federative Republic of Brazil, 1988. Translated and Revised Edition – Brasília, Senado Federal, Subsecretaria de Edições Técnicas, 1997.



## APPENDIX II

### **Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries**

#### Article 6

1. In applying the provisions of this Convention, governments shall:
  - (a) Consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly;
  - (b) Establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them;
  - (c) Establish means for the full development of these peoples' own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose.
2. The consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures.

#### Article 14

1. The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.
2. Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.



3. Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned.

Article 18

Adequate penalties shall be established by law for unauthorised intrusion upon, or use of, the lands of the peoples concerned, and governments shall take measures to prevent such offences.

### APPENDIX III

**Excerpts from the *Commitment to the Indigenous Peoples of Brazil. Plan for Government 2002, Coalition Lula for President.* (Amnesty International’s translation).**

#### *3. A NEW PROGRAM AND GUIDELINES FOR A DEMOCRATIC POLICY*

The complexity and importance of the indigenous question in Brazil requires the adoption of a combination of democratic methods and political coherence. To listen to the people who are of paramount importance and who have the greatest interest in this matter – the Indigenous Peoples themselves – requires time and a firmly pluralist attitude. It is therefore crucial to promote a wide-ranging debate on the issues and proposals for guidelines, if we are going to build an inclusive process, in which Indigenous Peoples and other interested parties can develop and consolidate mature and fully democratic foundations for a new Brazilian policy on indigenous peoples.

(...) Before that, however, and despite the preliminary nature of this document, we can list some guidelines that have been formulated on the basis of the experience of the indigenous movement and of experts committed to the indigenous cause in this country. It is necessary to:

- Along with the indigenous communities, experts in this field and political groups with a genuine interest, define a clear, democratic, objective, coherent policy on indigenous peoples that promotes respect for and provides full guarantees for the land rights and right to self-determination of indigenous peoples.
- Tenaciously fight impunity in the case of crimes against Indians, their communities and ethnic identity.
- Work with the National Congress for modern legal protection (a new Statute) that is coherent with a just, democratic and pluralist policy on indigenous peoples. Eliminate political, legal, ideological and bureaucratic obstacles to the demarcation of indigenous lands and block specific legislative initiatives (for example, the bill on mining in indigenous areas) that aim to neutralize or combat mechanisms in the new Statute.
- Promote respect for and strengthen measures to protect isolated indigenous populations.
- Organise a special emergency program by the government agency for indigenous peoples, to demarcate, ratify and register all current, undemarcated indigenous land;

correct corrupt practices in the demarcation of indigenous lands; and remove people from indigenous land they have illegally occupied.

- Improve administrative procedures with a view to speeding up the demarcation of indigenous lands.
- Establish a *Conselho Superior de Política Indigenista*, Supreme Council for Indigenous Policy, with significant indigenous participation. This supervisory agency will be responsible for promoting an effective and coherent official policy on indigenous peoples (inter-agency coordination), especially cooperating with the Federal Public Prosecutor’s Office.
- Conduct a thorough reorganisation of the federal agency responsible for indigenous peoples, with a view to making it a competent, efficient and responsive agency with a high technical and scientific capacity, strong decentralized structures and highly trained staff.