

## UNSECURED TERRITORIES: INSECURE FUTURES

### The Demarcation of Indian Lands in Brazil

*This report updates a previous Briefing Paper: The Demarcation of Indigenous Lands in Brazil (June 1993), produced by Oxfam United Kingdom/Ireland. It provides the latest information on obstacles impeding progress towards recognition of Indian land rights. Oxfam United Kingdom/Ireland, which has worked for many years with Indian Communities in Brazil, is recommending a number of measures that the British Government, the EC, World Bank and other donors must take to support the demarcation process.*

#### Summary

The Brazilian Government is failing its Indian citizens and condemning them to inevitable social and cultural disintegration. When the deadline laid down in the Brazilian Constitution for the demarcation of Indian lands expired on 5 October, 238 areas had still not been formally recognised. Despite the imminence of the deadline, over the past year the pace of demarcations has slowed dramatically. During this period FUNAI (Fundação Nacional do Índio - Brazilian Indian Bureau), the agency responsible for the demarcation work, has been starved of funds. This political neglect has been accompanied by an escalating level of violence against Indians, culminating last July in a massacre of 18 Yanomami Indians by freelance gold prospectors. A number of proposed revisions to the Brazilian Constitution, which have some support in Congress, seek to reduce the amount of land allocated to Indians and to block any demarcation in frontier regions.

The British Government and other Northern donors must take steps to reverse the deteriorating situation. At the Earth Summit, the industrialised countries pledged over \$250 million for a Pilot Program to conserve Brazil's rainforest and protect its indigenous inhabitants. The World Bank, which has completed the preparatory work, is expected to bring the Pilot Program projects to the donors for approval later this month (October 1993). Donors should insist before any of these projects is approved that the **Brazilian Government takes definite steps to demarcate the outstanding Indian areas and sets out a new timetable for completion of the process.** Aid projects, however well-intentioned, cannot succeed in the absence of an enabling policy environment. Brazil, the third largest recipient of World Bank loans, already has one of the worst records for non-compliance with loan conditions. Unless the Brazilian Government is determined to uphold the constitutional rights of the Indians, the Pilot Program, like so many projects before it, is doomed to fail.

## Introduction

On 5 October 1993 the deadline laid down in the Brazilian Constitution for the demarcation of Indian lands expired, with 238 areas still not formally recognised. The Brazilian Government has failed to fulfil its obligation towards its indigenous population. Demarcation is a lengthy and complex process which involves several stages for defining the area, physically marking the boundaries and registering the Indian's rights to the land by Presidential decree.<sup>1</sup> Securing the Indians' entitlement to their land is an essential factor in their social, economic and cultural survival. Yet the Brazilian Government has shown a disappointing lack of concern about complying with the deadline. Over the past year the pace of demarcations has slowed dramatically, reflecting a change in political priorities. In 1991, in the run-up to the Earth Summit, 105 areas were demarcated. During 1992 and 1993 full legal recognition was given to only 15 areas - more than 200 remain unprotected. Violence against indigenous peoples is escalating. But negotiations continue between the World Bank and the Brazilian Government for a major conservation project. The situation poses a dilemma for the British Government, which has expressed concern "that the constitutional rights of the indigenous peoples should be observed."<sup>2</sup>

## The Pilot Program to Conserve the Brazilian Rainforest

At the Earth Summit, the British Government, the European Community, the World Bank and the governments of other industrialized countries pledged themselves to support the Brazilian Government in its work to protect the rainforest and its indigenous inhabitants. The Pilot Program to Conserve the Brazilian Rainforest will finance an integrated set of projects designed to reduce the rate of deforestation, conserve biodiversity and promote sustainable development for the local population. There are components dealing with extractive and indigenous reserves, and projects to develop scientific centres of excellence and strengthen the capacity of State Agencies for environmental enforcement and control. The Pilot Program was launched at the request of the Group of Seven (G-7) industrialized countries, but is also supported by the Commission of the European Communities and the Netherlands. About \$280 million has been committed but almost no funds have yet been

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<sup>1</sup> The demarcation process involves the following stages:

- i) identification: the presence of Indians in a specific location is certified by FUNAI, the Brazilian Indian Bureau.
- ii) delimitation: FUNAI proceeds with an initial survey of the area and formally recognises its boundaries. The Minister of Justice issues a departmental directive (portaria) acknowledging the area as Indian land.
- iii) demarcation: the area's boundaries are physically demarcated to prevent encroachment.
- iv) homologation: the ratification of the area by Presidential decree.
- v) registration: the area is formally recorded in the land registry.

<sup>2</sup> Letter from Foreign Office Minister, Douglas Hogg, MP in reply to Cynog Davis MP, 10 August 1993

disbursed. Negotiations over the project proposals, coordinated by the World Bank, are nearing completion and the Pilot Program projects are shortly to be presented to the Bank's Executive Board for approval. The British Government should insist before any of these projects is approved that the Brazilian Government takes some definite steps to demarcate the outstanding 238 areas and agrees a new timetable for completion of the process.

## The Demarcation Debate in Brazil

Those who are most strongly opposed to demarcation - mining companies, loggers and the military - often argue that "there is too much land for too few Indians". This flies in the face of reality. If all Indian land were demarcated it would amount to about 10 per cent of Brazilian territory - significantly less than the 48.5 per cent occupied by large estates (latifundios) owned by 0.8 per cent of the population. Claims that demarcation of Indian lands would remove any prospect of settling Brazil's millions of landless peasants are also unfounded. According to INCRA (Instituto Nacional de Colonização e Reforma Agrária), the government agency responsible for settlement and land reform, 30.05 per cent of Brazil's available land is not even registered and 21.72 per cent of arable land is not in productive use. In other words there is plenty of land in Brazil to meet the needs of both Indians and peasants.

The cultural implications of demarcation have also to be considered. Indigenous people derive their cultural identity from their relationship to the land. Each Indian group has its own way of managing the environment to ensure the group's subsistence needs are met. Some groups are nomadic and use their territory extensively, others lead a more sedentary existence. These factors have to be taken into account when drawing up the boundaries of Indian reserves. In order to determine the size of each group's territory, anthropological, sociological and agricultural criteria are considered so that each group is allocated as much land as is necessary for its physical and cultural survival. Demarcation is a means of establishing the Indians' security of tenure. If Indians' land were formally registered and encroachments effectively checked, it would help to regulate mining activities across the region. This would be one of the most important means of reducing conflict over land and mitigating the environmental degradation caused by free-lance gold prospectors. In Roraima, the home of the Yanomami Indians, gold is smuggled out of the state to avoid taxes, bringing few local benefits. The mainstay of the local economy is cattle ranching and public sector employment. But the state politicians in Roraima are blocking further demarcations. Earlier this year the request by FUNAI (Fundação Nacional do Índio - the Brazilian Indian Bureau) for recognition of the Macuxi Indians' area of Raposa/Serra do Sol was rejected by the Minister of Justice. Despite the unpropitious circumstances, the World Bank has just announced that it will base a Pilot Program sub-project for sustainable resource management in the Macuxi area, which has been invaded by thousands of garimpeiros - free-lance gold prospectors, who pollute the rivers and create a climate of violence.

Despite the imminence of the deadline, the federal government has failed to allocate sufficient resources to ensure the completion of the demarcation process. In fact FUNAI has been starved of funds: last year it received less than 10 per cent of its budget. The continuing economic crisis in Brazil means that there is even less money available this year to enable FUNAI to monitor existing Indian reserves or to demarcate those outstanding. There have been times when FUNAI was unable to fly to remote

Indian areas to prevent or remove encroachers from the reserve because it had insufficient funds to maintain its aircraft in working order. Sydney Possuelo, the respected head of FUNAI, who supported the Indians' campaign for land rights, was forced to resign in June 1993. Since then the situation has deteriorated.

### **The Yanomami Massacre - A Climate of Insecurity**

The consequences of the Brazilian Government's failure to act promptly to protect isolated Indians groups against escalating levels of violence became clear in August 1993 when reports of a massacre of Yanomami Indians from the Haximu community, located near the Venezuelan border, began to surface. At first those opposed to demarcation dismissed the reports, claiming they were part of a plot to "limit Brazilian sovereignty" over the Amazon region. It now appears that in July 1993 18 Yanomami Indians were killed in two separate attacks against members of the Haximu community by Brazilian garimpeiros (gold prospectors) who were working gold deposits in a region straddling the Brazil-Venezuela border. It is still unclear whether the second attack took place inside Venezuelan territory. There is no doubt, however, that the perpetrators of the atrocity were Brazilian and that they had initially entered the Yanomami reserve from bases inside Brazil. Moreover, there is clear evidence that human rights abuses continue with impunity. Amnesty International has accused the Brazilian Government of failing to bring to justice those responsible for killing, abducting, harassing and threatening Indians.<sup>3</sup> The mining lobby has responded to the massacre by seeking political support for what it calls "a rational solution" to the problem -handing over the area to mining companies. Local politicians are intensifying their campaign to reduce the size of the Yanomami reserve, which was demarcated last year.

### **A Lack of Political Will**

The Brazilian Government's failure to meet the constitutional deadline has been compounded by its refusal to set a new timetable for completing the demarcations. This cast doubts on the authorities' commitment to protecting the rights of Brazil's indigenous people. These doubts have been heightened by the Brazilian government's failures to protect Indian lands from encroachment and safeguard their human rights. For example, no effective steps have been taken to curb the illegal activities of logging companies or gold prospectors on Indian land. In fact in July 1993 the Brazilian Government refused to consider a proposal put forward by the UK Timber Trading Federation, which would have ensured that export licences for hard woods (such as mahogany) would only have been issued where there was certification that they had not been illegally removed from Indian lands. Furthermore, government environmental protection agencies turn a blind eye to the invasions by logging companies of over 37 Indian areas rich in hard timber.

The Ministry of Justice, bowing to pressure from the Brazilian military, has refused to demarcate 18 areas, formally identified by FUNAI as Indian land. These areas (which include Raposa/Serra do Sol, Alto Rio Negro and the Vale do Javari) are located near the Brazilian frontier. The Brazilian military, who have been traditionally hostile to

<sup>3</sup>

Amnesty International Report, Brazil: "We are the Land": Indigenous Peoples' Struggle for Human Rights, January 1993

Indian land rights, persist in viewing the Amazon as an area of "national security". Over the past year they have started to reassert their plan, which was shelved by former President Collor after international protests. The plan, called Calha Norte, seeks to establish a series of military outposts and settlements within an 150 km wide security zone along Brazil's northern border.

There are a total of 510 Indian areas of which about 272 have been demarcated. Constitutionally the right of the Indians to their ancestral lands does not depend on demarcation, but the physical demarcation and ratification by presidential decree offers some limited measure of protection from invasion. However both demarcated and non-demarcated lands have been invaded by ranchers, mining companies, loggers and settlers. As much as 83 per cent of all demarcated areas have been encroached. This underlines one central lesson: namely that demarcation alone is not sufficient. It must be backed up by the political will and the necessary resources to check encroachment.

The Brazilian authorities have repeatedly failed to act decisively to check serious threats to Indian lands (exemplified by their response to the 1987 gold rush in the Yanomami area), taking action only after the situation has become virtually uncontrollable. This fait accompli strategy is condemning Brazil's Indians to inevitable social and cultural disintegration. In Rondonia State, for example, where the World Bank is financing Planafloco - a natural resource management project, which includes a component for the protection of Indian areas and the provision of basic health services - Indians appear to have been abandoned by the state. The isolated Uru Eu Wau Wau Indians, whose numbers have fallen from 1500 to 300 since their first contact in 1981, are reported to be in a desperate situation, weakened by disease, without adequate support from FUNAI, their territory overrun by loggers.

### **Provisional Demarcation - A Necessary Step**

The Brazilian Government must implement tangible measures if it wishes to convince the international community of its determination to address the crisis. On 16 September Indian organisations and their supporters handed over a petition to the Brazilian President calling for the immediate recognition of the remaining areas. Acknowledging that the task of demarcation could not be completed by 5 October 1993, they asked the Brazilian Government instead to "delimit" - that is formally recognise the boundaries - of the outstanding Indian areas. There are about 165 Indian areas which urgently require delimitation. Of these, 104 areas, many home to isolated Indians, have not yet been surveyed. These are particularly vulnerable.

The recognition of all these areas as Indian land - by authorising their immediate delimitation - would not involve large sums of money, despite one argument frequently used to justify delays in the demarcation process. It would signal the Brazilian Government's determination to respect the rights of the indigenous peoples. That is why Oxfam is calling upon the British Government and other donors to inform the management of the World Bank that they will not contemplate approval of the Pilot Program until a framework for demarcation has been agreed with the Brazilian government.



Indian organisations are also demanding that the Government set a new deadline for completing the physical demarcation of all 238 outstanding areas. At a meeting with the Minister of Justice, Mauricio Correa, Indians announced their intention of demarcating their own areas. They expressed their fears that, in the present unfavourable climate, the review of the 1988 Constitution currently underway in the Brazilian Congress might damage their interests. **A number of proposed revisions to the Constitution, which have some support in Congress, seek to reduce the amount of land allocated to Indians and to block any demarcation in frontier regions.** If these amendments are passed, the donor community should be in no doubt that they will undermine the future survival of both Brazil's rainforest and its indigenous population.

### **What Role for the UK Government and other Donors?**

The British Government has expressed its concern to protect Brazil's unique environment - in 1989 a Memorandum of Agreement established a £20 million programme of technical cooperation to help strengthen Brazilian environmental institutions and to fund bio-diversity projects. At the Earth Summit Baroness Chalker announced support for the Yanomami health project to combat the malaria epidemic brought about by the activities of the *garimpeiros*. Britain has pledged support for the Pilot Program<sup>4</sup>. Many projects, such as that for Indigenous Reserves, are shortly to be presented for approval to the World Bank's Executive Board and other donors. **Yet in 1992 the World Bank admitted that Brazil, one of the largest recipients of Bank loans, had one of the worst rates of non-compliance with project conditions.** Oxfam believes that aid projects, however well intentioned, cannot succeed in the absence of an enabling policy environment. So far there is little indication of Brazilian Government to the implementation of the environmental and social objectives contained in the Pilot Program. Without that commitment the Pilot Program is doomed from the outset. Before allocating more funds the British Government and other donor governments should insist that approval of any part of the program, except those relating to small-scale demonstration projects administered by NGOs, should be made dependent on the Brazilian Government taking a number of urgent steps to resolve the problem of demarcation. These steps should include:

- **setting a new timetable for completing the demarcation of all Indian land;**
- **agreeing with the Bank clearly identifiable benchmarks by which progress can be measured;**
- **"delimiting"- formally recognising the boundaries - of all remaining areas as an interim measure;**
- **authorising the physical demarcation of the areas whose boundaries have already been recognised by FUNAI and which have been submitted to the Ministry of Justice;**
- **ratifying those areas whose boundaries have been demarcated;**

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<sup>4</sup> The British Government is re-allocating the funds already earmarked under 1989 Memorandum of Agreement to the Pilot Program.

- confirming support for the guarantees of indigenous peoples' rights contained in Articles 231 and 232 of the Constitution;
- investigating violations of the civil and political rights of indigenous people, and ensuring that those responsible for crimes are punished according to the law.

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