RESOLUTION Nº 12/85
Case Nº 7615
BRAZIL
March 5, 1985

BACKGROUND:

1. On December 15, 1980, a petition against the Government of Brazil was presented to the Inter-American Commission on Human Rights, in which the petitioners, Tim Coulter (Executive Director, Indian Law Resource Center); Edward J. Lehman (Executive Director, American Anthropological Association); Barbara Bentley (Director, Survival International); Shelton H. Davis (Director, Anthropology Resource Center); Groge Krumbhaar (Acting President, Survival International, U.S.A.); and other persons, allege violations of the human rights of the Yanomami Indians, citing in particular the following articles of the American Declaration of the Rights and Duties of Man: Article I (Right to Life, Liberty, and Personal Security); Article II (Right to Equality before the Law); Article III (Right to Religious Freedom and Worship); Article XI (Right to the Preservation of Health and to Well-being); Article XII (Right to Education); Article XVII (Right to Recognition of Juridical Personality and of Civil Rights); and Article XXIII (Right to Property).

2. From examination of the documents and testimony submitted to the Commission, the following antecedents of fact and law can be inferred:

a. Between 10,000 and 12,000 Yanomami Indians live in the State of Amazonas and the Territory of Roraima, on the border with Venezuela;

b. The Brazilian Constitution guarantees the right of the Indians to their own territory and stipulates that this constitutes permanent and inalienable ownership (Constitutional Amendment Nº 1/69, Article 198). It also establishes the right of the Indians to the exclusive use of the natural resources of their territory;

c. Article 23 of the Estatuto do Indio (Statute of the Indians Law 6,001 of 1973) establishes that "the lands occupied by them in accordance with their tribal usage, customs and tradition, including territories where they carry on activities essential for their subsistence or that are of economic usefulness" constitute territory of the Indians;

d. Article 2 of Law 6,001 also guarantees the right of the Indians and of the Indian communities to "possess permanently the lands they occupy, recognizing to them the right to the exclusive usufruct of the natural resources and all useful things therein existing";

e. Article 6 of the Brazilian Civil Code establishes that the Indians are considered "relatively incompetent" and are under the "guardianship" of

the Fundaçäo Nacional do Indio (FUNAI - National Indian Foundation). That institution is under the Ministry of the Interior and was established for the defense, protection, and preservation of the interest and cultural heritage of the Indians and also to promote programs and projects related to their social and economic development;

f. In the decade of the 1960s the Government of Brazil approved a plan of exploitation of the vast natural resources in and development of the Amazon region. In 1973 construction began on highway BR-210 (the Northern Circumferential Highway), which, when it passed through the territory of the Yanomami Indians, compelled them to abandon their habitat and seek refuge in other places;

g. During the decade of the 1970s, rich mineral deposits were discovered in the zones of Couto de Magalhäes, Uraricäa, Surucucus, and Santa Rosa --territories of the Yanomamis-- which attracted mining companies and independent prospectors (garimpeiros), thus aggravating the displacement of thousands of Indians;

h. Between 1979 and 1984 various efforts were made and various projects presented aimed at marking the boundaries of a Yanomami Park as Indian territory;

i. In March 1982, after an intensive campaign of protest by national and international human rights and Indian defense organizations, the Government of Brazil, by ministerial decree GM/Nº 025, established the interdiction (absolute reservation) of a continuous territory of 7,000,000 hectares in the Federal Territory of Roraima and the State of Amazonas for the Yanomami Indians. Among other provisions, that decree assigned to the FUNAI the responsibility for taking the following five measures for protection of the Yanomami Indians:

   i. the interdiction (absolute reservation) of a continuous area of land;

   ii. the establishment of an administrative structure with enough control posts to coordinate and implement the assistance to the Yanomamis;

   iii. the construction of landing strips at the control posts and various areas for the purposes of attracting isolated groups of Indians as well as establishing an infrastructure for building roads and highways;

   iv. the adoption of measures to protect the Indian groups, especially those related to the reserved areas, to protect the natural environment and preserve the existing buildings and equipment; and

   v. to coordinate and direct the activities of the religious missions.

j. On September 12, 1984, the then President of the FUNAI, Mr. Jurundy Marcos da Fonseca, submitted a new proposal to the inter ministerial Working Group that had been established in 1983 through Decree 88,118. It aimed at defining the future Yanomami Indian Park with an area of 9,419,108 hectares, which would include practically all the territory and the villages that the Yanomamis inhabit. Up to now, however, that proposal has not been implemented.

3. In the presentation made by the petitioners and in subsequent testimony and

reports given to the Commission by them, the following allegations were made:

a. The massive penetration of outsiders into the area has had devastating physical and psychological consequences for the Indians; it has caused the break-up of their age-old social organization; it has introduced prostitution among the women, something that was unknown; and it has resulted in many deaths, caused by epidemics of influenza, tuberculosis, measles, venereal diseases, and others.

b. Despite repeated interventions in behalf of the Indians by many humanitarian, religious, and pro-Indian organizations, the authorities responsible for the Indians's health and for ensuring the implementation of the provisions of the Constitution and the law have done little.

c. The agricultural development projects carried out by the Instituto Nacional de Colonizaçäo e Reforma Agraria (INCRANational Institute for Settlement and Agrarian Reform), established for the benefit of the Indians displaced from their lands, have not produced the desired effects. The result, on the contrary, has been the loss of their lands and their compulsory transfer to agricultural communities that do not correspond to their customs and traditions.

d. The process of integration of the Indians, as it is established in the legislation and as it is applied by the responsible authorities, tends toward the disintegration and destruction of the Indian communities, instead of contributing to their economic and social well-being.

e. The occupation and development of the area of Amazonas and the Territory of Roraima has resulted in the destruction of encampments and the disappearance and death of hundreds of Yanomami Indians and threatens to make them extinct.

f. The proposal for the establishment of the "Yanomami Indian Park," while it has received the support of the Federal Government, on the other hand has been objected to by sectors primarily interested in the economic development of the State and the Territory of Roraima, which have expressed their opposition to the project, and so far this has resulted in noncompliance with Law 6,001, which provided for the reservation of the Indians lands.

4. All the communications from the petitioners have been duly transmitted to the Government of Brazil, from which the Commission has requested the pertinent information. The Government, in its Notes Nº 127 of May 13, 1981, and Nº 316 of November 3, 1981, Nº 101 of April 14, 1982, and Nº 38 of February 13, 1985, in response to those requests by the Commission, has commented broadly on the Brazilian legislation in relation to the legal status and the civil and political rights of the Indians, as well as on the main points raised in the petitioners accusations, in terms that are summarized here following:

a. Legal status of the Indians in Brazil. Civil rights

i. In accordance with Brazilian law, the Indians are considered relatively incompetent to perform certain acts and are placed under administrative guardianship for their protection. The law provides suitable protection for all "individuals" and "communities of Indians."

ii. The Federal Constitution guarantees to the Indians the right to movement, the right of assembly, and the right to freedom of expression. The FUNAI does not interfere in any way in the enjoyment of these rights.

iii. Since 1980, the FUNAI has increased the budget for education of the

Indians so that they may study in educational centers near their communities.

b. Political rights

i. The Indians are holders of political rights guaranteed by Law 6,001 of 1973. The exercise of these rights depends on verification of the special conditions established in that law and the pertinent legislation.

ii. Emancipation (being freed form guardianship) on a community level is governed by Article 11 of the Statute of the Indians (Law 6,001) and may be declared by the President of the Republic by decree when a majority of the members of a community request it and the individual members full integration into the national society is verified by investigation by the competent federal organ. Emancipation cannot emanate from an initiative of the guardian organ (FUNAI) or be declared independently of the will of the community. As regards the participation of Indians in city or county councils, the Government has pointed out that "there are some Indians on these Councils, particularly in the State of Mato Grosso do Sul."

c. Protection of the Indians' health

The Government has informed the Commission that in the last three years, through the FUNAI, with cooperation under an agreement with the French association "Médecins du Monde" (Doctors at the World) and in cooperation with the Committee for the Establishment of the Yanomami Park, it has been concerning itself with health care for the Yanomamis through mass vaccinations and control of epidemics.

d. Protection of the Indians' lands

The Indians' lands are protected both by the Federal Constitution and by the Statute of the Indians (Law 6,001, articles 6, 22, 24, 25, and 44). With respect to the establishment of the Yanomami Indian Park, the Government has recognized that the period established by Law 6,001 for the demarcation of the boundaries of the Indian lands has already expired (Note Nº 316), and it has informed the Inter-American Commission on Human Rights that "the definition of the Yanomami area is being carefully considered and is in the final stage of study by representatives of the FUNAI, the General Secretariat of the Ministry of the Interior, the Special Secretariat for the Environment, the Instituto Brasileiro de Desenvolvimento Florestal (Brazilian Institute of Forest Development), and the General Secretariat of the National Security Council".

The Government has also reported that the FUNAI has been trying hard to complete the withdrawal of all persons who are illegally occupying Indian lands. This task has been accomplished in several zones.

Later, by Note Nº 38 of February 13, 1985, the Government informed the Commission that, with respect to the extent of a continuous area for the Yanomamis, the President of the FUNAI, on September 12, 1984, had sent a new proposal for the definition of the future Yanomami Indian Park to the Inter ministerial Working Group established by Decree 88,118/83. Under that proposal, the area of the Park would be 9,419,108 hectares, which would include all the isolated Yanomami areas (Ajarani, Catrimani, and Pacu); and its establishment depends on the determination of the border lines and the establishment of an infrastructure, which is now at an advanced stage.

In that same note in February of this year, the Government informed the Commission that the President of the FUNAI, in response to the request of the chiefs of the control posts in the Yanomami area, by Ministerial Decree Nº 1817/E of January 8, 1985, prohibited the transit or stay of non-Indian individuals or groups, mainly mining prospectors, in the area, and that up to the date of that note, no mining company had been permitted to enter Yanomami

territory.

e. Possibility of transfer of tribal groups and of intervention by the Government in the Indians' zones

i. Law 6,001 gives the President of the Republic the power and right to intervene in the areas inhabited by Indians, to expropriate property, and to move them for exceptional reasons (Article 20), among them: to carry out public works of interest to national development, for the exploitation of resources of the subsoil belonging to the Federal State that are of great interest for security and national development, and national security requirements. Such transfer of Indians may be done through a decree by the President of the Republic.

Law 6,001 of 1973 provides for conditions under which the government agencies may proceed to transfer groups of Indians to areas equivalent to those to which they are accustomed.

ii. As regards the exploitation of and concession of rights to minerals in Indian lands, Article 168 of the Constitution provides that the resources of the subsoil belong entirely to the Federal State even when they are under private property. In order to protect the heritage of the Indians, Law 6,001 permits exploitation of the subsoil of Indian lands only in cases of great national interest, by federal public entities, after they have obtained the consent of the FUNAI and only when it is a matter of strategic minerals necessary for national security or development.

CONSIDERING:

1. That the petitioners reported to the Commission the violation of the human rights of the Yanomami Indians by the Government of Brazil and by the National Foundation for Indians (FUNAI) the government agency of guardianship of the Indians established to administer the Government's Indian policy and to implement Law 6,001 of December 19, 1973, called the "Statute of the Indians."

2. That the reported violations have their origin in the construction of the trans-Amazonian highway BR-210 that goes through the territory where the Indians live; in the failure to establish the Yanomami Park for the protection of the cultural heritage of this Indian group; in the authorization to exploit the resources of the subsoil of the Indian territories; in permitting the massive penetration into the Indians' territory of outsiders carrying various contagious diseases that have caused many victims within the Indian community and in not providing the essential medical care to the persons affected; and finally, in proceeding to displace the Indians from their ancestral lands, with all the negative consequences for their culture, traditions, and costumes.

3. That the Federal Constitution of the Republic stipulates in Article 4.IV that the patrimony of the Union includes "the lands occupied by forest-dwelling aborigenes," and that, moreover, in Article 198 it states:

Lands inhabited by forest-dwelling aborigenes are inalienable under the terms that federal law may establish; they shall have permanent possesion of them, and their right to the exclusive usufruct of the natural resources and of all useful things therein existing is recognized.

4. That for legal purposes, Law 6,001 in its Article 3, established two groups of Indians:

a. the "Indians or Forest-dwelling Aborigenes," that is to say, individuals of pre-Colombian origin whose cultural characteristics distinguish them form the national society; and;

b. the "Indian Community or Tribal Group," which refers to groups that may live isolated from, or in any case not integrated into, the national community.

5. That, moreover, for the protection of the Indian territory, Law 6,001 (the Statute of the Indians) provides as follows:

Article 19

On the initiative and under the supervision of the federal organ for assistance to the Indians, the Indian lands shall be administratively demarcated in accordance with the procedure established in a decree of the Executive Branch.

Article 25

Recognition of the right of the Indians or tribal groups to have permanent possession of the lands they inhabit, under the terms of Article 198 of the Federal Constitution, shall not depend on the demarcation of those lands, and shall be ensured by the federal organ for assistance to the forest-dwelling aborigenes...

6. That Article 20 of Law 6,001 stipulates that the Union, by decree of the President of the Republic, may intervene in the areas occupied by Indians in exceptional cases, such as: a) for national security reasons; b) to carry out public works of interest to national development; and c) for the exploitation of resources of the subsoil that are of great interest for security and national development.

7. That international law in its present state, and as it is found clearly expressed in Article 27 of the International Covenant on Civil and Political Rights, recognizes the right of ethnic groups to special protection on their use of their own language, for the practice of their own religion, and, in general, for all those characteristics necessary for the preservation of their cultural identity.

8. That on the subject of indigenous populations the Commission, in an earlier recommendation it adopted, has pointed out:

That for historical reasons and because of moral and humanitarian principles, special protection for indigenous populations constitutes a sacred commitment of the states;

That on various occasions this Commission has had to take cognizance of cases in which it has been verified that abuses of power committed by government officials responsible for administrative work in connection with indigenous communities have caused very serious injury to the human rights of their members;

That these offenses against human rights are all the more reprehensible considering that they are committed by agents of the public power and have as their victims persons or groups for whom the effective exercise of the means of defense established by the laws of the respective states is particularly difficult;...

It therefore recommended:

1. That all the states pay very special attention to the suitable training of the officials who are to perform their work in contact with the aforementioned populations, awakening in those officials an awareness rights of indigenous persons, who should not be the object of discrimination of any kind. (OEA/Ser.P.AG/doc. 305/73, rev. 1, March 14, 1973, pp. 90 and 91)

9. That the Organization of American States has established, as an action of priority for the member states, the preservation and strengthening of the cultural heritage of these ethnic groups and the struggle against the discrimination that invalidates their members' potential as human beings through the destruction of their cultural identity and individuality as indigenous peoples.

10. That from the careful examination made by the Commission of the facts, including the replies from the Government of Brazil, it finds the following:

a. That on account of the beginning, in 1973, of the construction of highway BR-210 (the Northern Circumferential Highway), the territory occupied for ages beyond memory by the Yanomami Indians was invaded by highway construction workers, geologists, mining prospectors, and farm workers desiring to settle in that territory;

b. That those invasions were carried out without prior and adequate protection for the safety and health of the Yanomami Indians, which resulted in a considerable number of deaths caused by epidemics of influenza, tuberculosis, measles, venereal diseases, and others;

c. That Indian inhabitants of various villages near the route of highway BR-210 (the Northern Circumferential Highway) abandoned their villages and were changed into beggars or prostitutes, without the Government of Brazil's taking the necessary measures to prevent this; and

d. That after the discovery in 1976 of ores of tin and other metals in the region where the Yanomamis live, serious conflicts arose that led to acts of violence between prospectors and miners of those minerals, on one side, and the Indians, on the other. Such conflicts, which occurred especially in the areas of the Serra dos Surucucus, Couto de Magalhäes, and Furo de Santa Rosa, affected the lives, security, health, and cultural integrity of the Yanomamis.

11. That from the facts set forth above a liability of the Brazilian Government arises for having failed to take timely and effective measures to protect the human rights of the Yanomamis.

12. That the Government of Brazil, in the last few years, has taken various measures to overcome or alleviate the problems that have come up with the Yanomami Indians. In that direction, the Government of Brazil has reported, through a note from its Permanent Representative to the Organization of American States dated February 13, 1985, that it has taken the following measures to protect the security, health, and integrity of the Yanomamis:

a) The President of the FUNAI sent a proposal to the inter ministerial working group on September 12, 1984, requesting the definition and demarcation of the boundaries of the future Yanomami Park, which would have an area of 9,419,108 hectares;

b) The area proposed for that Park would cover the isolated areas of Ajarani, Catrimani, and Pacu, as well as four control posts, three surveillance posts, and a number of religious missions that would be able to provide medical and other services to the Indians;

c) The FUNAI, with the cooperation of the French association "Médecins du Monde" and the Committee for the Establishment of the Yanomami Park, is carrying out a health program among the Yanomamis, which especially includes mass vaccinations and control of epidemics;

d) The President of the FUNAI has prohibited the transits or stay of non-Indian individual or groups, especially mining prospectors, in the

area proposed for the establishment of the Yanomami Park;

e) Up to now, no mining company has entered the Yanomami's region; and

f) The plan for aid and assistance to the Yanomamis continues being carried out by Regional Delegation Nº 10 of the FUANI, which has its headquarters in Boa Vista, Roraima.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, RESOLVES:

1. To declare that there is sufficient background information and evidence to conclude that, by reason of the failure of the Government of Brazil to take timely and effective measures in behalf of the Yanomami Indians, a situation has been produced that has resulted in the violation, injury to them, of the following rights recognized in the American Declaration of the Rights and Duties of Man: the right to life, liberty, and personal security (Article I); the right to residence and movement (Article VIII); and the right to the preservation of health and to well-being (Article XI).

2. To recognize the important measures that the Government of Brazil has taken in the last few years, particularly since 1983, to protect the security, health, and integrity of the Yanomami Indians.

3. To recommend:

a) That the Government of Brazil continue to take preventive and curative health measures to protect the lives and health of Indians exposed to infectious or contagious diseases;

b) That the Government of Brazil, through the FUNAI and in conformity with its laws, proceed to set and demarcate the boundaries of the Yanomami Park, in the manner that the FUNAI proposed to the inter ministerial working group on September 12, 1984;

c) That the programs of education, medical protection, and social integration of the Yanomamis be carried out in consultation with the indigenous population affected and with the advisory service of competent scientific, medical, and anthropological personnel; and

d) That the Government of Brazil inform the Commission of the measures taken to implement these recommendations.

4. To include this resolution in its Annual Report to the General Assembly of the Organization of American States.

Notes: Dr. Andrés Aguilar did not participate in the consideration and decision of this case.

Dra. Gilda Russomano refrained from participating in this case pursuant to Article 19 of the Regulations.