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February 24, 1984

Ms. Christina Cerna
Inter-American Commission on Human Rights
Organization of American States
1889 F. Street, NW
Room 810A
Washington, DC 20006

Dear Ms. Cerna,

We wish to thank you once again for your telephone communication of 7 February requesting additional information pertinent to Case No. 7.615 about alleged human rights violations against the Yanomami Indians of Brazil.

As the Commission is aware, on 9 March 1982, the Brazilian government interdicted a continuous land area of 7,700,000 hectares for the 8,500 Yanomami Indians of the Federal Territory of Roraima and State of Amazonas.

In the government's resolution (Portaria/ GM/ No. 025; see Item #1 of documents attached), the National Indian Foundation (FUNAI) was charged with the responsibility of adopting the following five measures for the support and protection of the Yanomami Indians:

- 1.) the interdiction of a continuous land area;
- 2.) the establishment of an administrative structure with sufficient Indian posts to coordinate and carry out assistance for the Yanomami;
- 3.) the construction of airstrips at Indian posts and in other areas to attract isolated groups, as well as to set up an infrastructure for communications and roads;
- 4.) the adoption of measures to protect Indian groups, especially those related to interdicting the area, to protecting its natural heritage, and to conserving existing buildings and equipment; and
- 5.) the coordination and monitoring of the activities of religious missions.

In addition, the resolution called upon FUNAI to elaborate and execute, with the collaboration and supervision of the Secretary General of the Ministry of the Interior, a Plan for Support and Assistance to the Yanomami Indians. This Plan would include programs and projects for the delimitation and demarcation of the Indian area, education, health, community development, research, and basic support infrastructure.

Shortly after the March 1982 resolution went into effect, FUNAI began to set up an administrative structure in the area inhabited by the Yanomami. The Indian agency also established a Yanomami Work Group, comprised of government Indian agents and members of the Commission for the Creation of the Yanomami Park (CCPY). Finally, FUNAI has worked with the CCPY, as well as with international humanitarian organizations, in providing medical protection for the Yanomami.

Following these measure, there was great confidence among both Brazilian and international human rights organizations that the Brazilian government would continue the process of establishing a Yanomami Indian Park. Nearly two years have passed since the resolution interdicting the Yanomami area went into effect, but the government's intent to create an Indian Park has still not been realized.

From statements submitted by Dr. Kenneth I. Taylor, the Executive Director of Survival International USA, the Commission is aware that an "interdictioh" is a strictly temporary measure that does not automatically imply that the designation of an Indian Park or Reserve will follow. As Dr. Taylor notes in his October 1983 communication, unless an "interdiction" is followed by delimitation and demarcation, "an area remains extremely vulnerable to invasion, encroachment, and expropriation of one kind or another, where official or unofficial."

Throughout 1982 and 1983, the Anthropology Resource Center, along with the other signers of the original complaint on behalf of the Yanomami, anxiously waited to see whether FUNAI and its newly created Yanomami Work Group would actually implement its Plan for Support and Assistance to the Yanomami Indians. By late 1982, we received reports that all progress on the Plan had come to a halt and, by early 1983, Brazilian newspapers reported that the Plan could not be put into effect because of a lack of funds. To our knowledge, there have been no further actions by FUNAI either to revive the Yanomami Work Group or to implement the Support Plan.

Meanwhile, there have been several fundamental changes in Brazilian Indian policy which jeopardize the eventual creation of a Yanomami Indian Park.

First, on 23 February 1983, Brazilian President João Figueiredo signed Decree No. 88.118 creating an Interministerial Work Group for demarcating Indian lands (see, Decreto No. 88.118; Item #2 of documents

attached). This Work Group is comprised of representatives of the Ministry of the Interior, the Special Ministry for Land Affairs, FUNAI, and other federal and state agencies.

According to the 1973 Indian Statute, FUNAI was to demarcate all Indian lands by 1978. Since this legal responsibility has not been fulfilled, the government-- instead of strengthening FUNAI-- is placing its responsibilities for Indian land demarcation in the hands of other federal and state agencies. Many of these agencies have a history of exploiting natural resources on indigenous lands, coveting and even in some cases expropriating Indian lands. This is especially true in Roraima where the territorial governors and federal deputies have consistently pressured the federal government to open up the Yanomami area to large-scale and rapid economic development.

Second, on 24 May 1983, Federal Deputy Mozarildo Cavalcanti of Roraima introduced into the Brazilian Congress Legal Project No. 1.179, which would authorize the Executive Power to provide for the opening up and exploitation of cassiterite placer-mining at the Serra de Surucucus in Roraima (see, Projeto de Lei No. 1.179; Item #3 of documents attached). Mining rights would be jointly given to the Roraima Development Corporation (CODESAIMA) and FUNAI.

The Serra de Surucucus is the heart of the traditional lands of the Yanomami Indians. Some 4,000 Indians, many of whom have never had contact with the national society, live in the region. Since 1975, these Indians have been threatened by mining activities. Although FUNAI has been inoculating the Indians of Surucucus since 1981, the vaccination program is still not complete. A medical report prepared by the CCPY in March 1983 states that FUNAI does not have the capacity to undertake systematic vaccinations in such an isolated area. Legal Project No. 1.179, if implemented, would completely undermine FUNAI's efforts to continue its medical work and to establish a land reserve for the Indians.

Third, on 10 November 1983, Brazilian President João Figueiredo signed Decree No. 88.985 authorizing mining in Indian areas by federal, state, and private companies (see, Decreto No. 88.985; Item #4 of documents attached). For several reasons, we believe that this decree constitutes a violation of the rights of the Yanomami and other Brazilian Indian tribes.

Although Decree No. 88.985 provides for Indian participation as laborers in mining projects, it neither gives indigenous communities royalties for extracted minerals nor provides them with the right to decide whether mineral corporations should be permitted on their lands. The decree does not distinguish between indigenous peoples in different stages of contact with the national society; in cases of minimal or no contact-- as with the Yanomami Indians-- corporate mining poses a serious threat to the survival of the indigenous communities.

Decree No. 88.985 also contradicts article 198 of the Brazilian Constitution which guarantees the Indians' permanent possession of the lands they occupy. Finally, the decree places an enormous administrative burden on FUNAI which lacks even the minimal capacity to monitor the consequences of mining in an area such as that of the Yanomami.

The Inter-American Commission on Human Rights should also be aware of more fundamental changes taking place in the political and civil rights of Brazil's indigenous populations. On the one hand, the past few years have witnessed the emergence of a broad-based national movement in defense of the rights of the country's indigenous peoples. Increasingly, this movement has been led by Brazilian Indians themselves and has sought redress for Indian grievances within Brazil's civil courts and parliamentary system.

On the other hand, a powerful authoritarian structure, backed up by economic interests, has sought to suppress this democratic expression of indigenous rights. Recently, two legal measures have been proposed which, if instituted, would effectively remove the legal ability of Indians to defend and express their rights.

These proposed legal measures are: first, Article 3, Inciso IV, of the new Brazilian Civil Code which would redefine Indians as "absolutely incapacitated" (see, Item #5 of documents attached) and would put them under the total and direct tutelage of FUNAI; and, second, Legal Project No. 2.465 (see, Item #6 of documents attached) which proposes the compulsory "emancipation" of all Indians from the tutelage of FUNAI. Besides being contradictory, these two measures would, in effect, take away all rights presently guaranteed to Brazilian Indians, as Indians, by the Brazilian Constitution, Civil Code, and the Indian Statute.

In conclusion, we request that the Inter-American Commission on Human Rights consider the above additional facts pertinent to Case No. 7.615 and transmit the following recommendations to the Brazilian government:

- 1.) that FUNAI immediately begin the process of delimitation and demarcation of Yanomami Indian lands, as well as implement all other measures outlined in Portaria/GM/ 025 of 9 March 1982;
- 2.) that FUNAI not permit mining of any nature on Yanomami lands until all measures expressed in Portaria/ GM/ 025 have been fulfilled;
- 3.) that a comprehensive parliamentary assessment of FUNAI's structure and relationship to indigenous communities be conducted in order to strengthen the agency's capacity to defend indigenous land rights; and

- 4.) that the political and civil rights of Brazilian Indians, as Indians-- as defined in the Brazilian Constitution and Indian Statute-- be fully respected, and that measures to protect and guarantee these rights be enforced.

Recognizing the great amount of concern and effort that the Inter-American Commission on Human Rights has put into Case No. 7.615, we are

Respectfully Yours,

Shelton H. Davis

Shelton H. Davis, Ph.D.
Executive Director, ARC

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March 2, 1984

TO: Claudia Andujar (CCPY)
 Barbara Bentley (Survival International)
 Curtis Berkey (Indian Law Resource Center)
 Jason Clay (Cultural Survival)
 Edward J. Lehman (American Anthropological Association)
 Kenneth I. Taylor (Survival International USA)

FROM: Shelton H. Davis

RE: Inter-American Commission on Human Rights Complaint on Behalf of Yanomami Indians of Brazil

You will find enclosed a copy of a long letter that Robin Wright and I drafted in regard to Case No. 7.615 before the OAS Inter-American Commission on Human Rights (IACHR) on behalf of the Yanomami Indians of Brazil.

As we understand it, the IACHR will be drafting a final resolution on the Yanomami complaint at its next meeting in May. Ms. Christina Cerna of the Commission asked us to provide her with updated information on the Yanomami situation, as well as current Brazilian Indian policy, in order to assist the Commission in drafting its resolution.

We thought you would wish to have a copy of this letter for your files. To save postage, we have not enclosed the attached documents mentioned in the letter. If you wish copies of these documents, most of which are proposed Brazilian laws and decrees, please contact us at ARC.

We are unsure whether the IACHR will wish to receive additional letters or information concerning Case No. 7.615. Seemingly, they asked us for this information so they can pass a resolution which has been pending for the past three years.

As we hear more about this matter, we will keep you and your organizations informed.

Sincerely,

Shelton H. Davis
 Shelton H. Davis
 Executive Director

Handwritten notes:
 Pudo - also as argumentes
 Sandy & Robin
 Sandy & Robin
 Sandy & Robin
 Sandy & Robin