

REPORT No. 32/12
PETITION 11.706
FRIENDLY SETTLEMENT
YANOMAMI INDIGENOUS PEOPLE OF HAXIMU
VENEZUELA
March 20, 2012

I. SUMMARY

1. On December 6, 1996, the Inter-American Commission on Human Rights (hereinafter “the Commission” or the “IACHR”) received a petition lodged by the Apostolic Vicariate of Puerto Ayacucho, the Venezuelan Program for Human Rights Education and Action (PROVEA), the Center for Justice and International Law (CEJIL) and Human Rights Watch (hereinafter “the petitioners”), against the Bolivarian Republic of Venezuela (hereinafter “the State” or “Venezuela”), for the murder of 16 Yanomami indigenous persons from the Haximu region (hereinafter “the alleged victims”), in June and July 1993; for not effectively preventing the presence of the *garimpeiros*¹ (independent mining prospectors) on Yanomami territory; and for failure to investigate, prosecute and punish those responsible.

2. The petitioners alleged that the State was responsible for the violation of the right to life, humane treatment, a fair trial, property, freedom of movement and residence, equal protection and judicial protection, as established in Articles 4, 5, 8, 21, 22, 24, 25 of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”), to the detriment of the alleged victims, as well as the obligation to respect and ensure the rights protected under Article 1.1 of the Convention.

3. On October 10, 1997, the IACHR placed itself at the disposal of the parties in order to reach a friendly settlement. On October 1, 1999, the parties entered into a preliminary agreement to reach a friendly settlement. On October 10, 1999, the parties ratified the friendly settlement agreement (hereinafter “the settlement agreement” or “agreement”) in Venezuela. On March 3, 2004, the State submitted objections to the friendly settlement agreement, requesting that a new agreement be signed. On May 5, 2006, the IACHR conveyed to the parties that it was terminating its involvement in the friendly settlement process and resolved to continue processing the petition at the request of the petitioners.

4. On December 5, 2006, the IACHR once again placed itself at the disposal of the parties with a view to reach a friendly settlement. On October 11, 2006, the State reported that it was engaged in talks with the petitioners in order to reach a friendly settlement and on March 6, 2007, the petitioners reported that they had re-entered into the settlement agreement with the State. This communication was forwarded to the State for its response and the State offered no reply. On February 26, 2008, the petitioners expressly requested the instant report to be issued, as they considered that “the IACHR had all the elements available to draw up an ACHR (American Convention on Human Rights) Article 49 report,” and this request was forwarded to the State for its response which, as of the date of the approval of the instant report, has not been received.

5. In the instant friendly settlement report, as provided for in Article 49 of the American Convention and in Article 40.5 of the Rules of Procedure of the Inter-American Commission on Human Rights (hereinafter “the Rules of Procedure”), the IACHR provides a brief statement of the facts of the petition, outlines the parties’ agreement and issues its decision to publish it.

II. PROCESSING BY THE COMMISSION

6. The Commission assigned the petition the number 11.706 and on January 16, 1997 conveyed the appropriate portions thereof to the State, granting it a period of 90 days to submit its response. On

¹ Garimpeiro: precious stones or metals seeker. <http://www.wordreference.com/ptes/>.

March 13, 1997 the State requested an extension, which was granted by the IACHR. On May 13, 1997, the Commission reiterated its request for information from the State. On May 15, 1997, the State requested a second extension, which was granted by the IACHR. On July 24, 1997, the IACHR reiterated its request for information. On July 29, 1997, the State submitted its response, which was forwarded to the petitioners for their observations.

7. On August 13, 1997, the petitioners requested a hearing during the 97th Regular Session of the IACHR. It was granted and scheduled for October 10, 1997. The petitioners submitted additional information on August 26, 1997, which was forwarded to the State for its response.

8. On October 10, 1997, at the hearing requested by the petitioners, the IACHR placed itself at the disposal of the parties in order to reach a friendly settlement. In a communication of October 15, 1997, the petitioners expressed their interest in seeking a friendly settlement, and the letter was forwarded to the State on October 22, 1997 for its response. The petitioners reiterated their interest in a letter of December 19, 1997, which was forwarded to the State on January 30, 1998 for its response. On February 5, 1998, the petitioners provided additional information, which was conveyed to the State for it to furnish information of an urgent nature "in order to avoid irreparable harm to the members of the Yanomami indigenous community." Said requests were renewed on March 30, 1998.

9. On April 28, 1998, the State accepted the Commission's proposal to reach a friendly settlement. On August 18, 1998, the petitioners provided additional information conveying to the IACHR that on June 22, July 13 and 27, 1998, they had held meetings with the State in the context of the friendly settlement process, and that no concrete agreement had been reached, and this information was forwarded to the State for its response. On August 25, 1999, the petitioners requested a hearing during the 104th Regular Session of the IACHR, which was granted for October 1, 1999.

10. On October 1, 1999, during the 104th Regular Session of the IACHR, the State and the petitioners entered into a preliminary agreement to reach a friendly settlement. On December 9, 1999, the State and the petitioners conveyed to the IACHR that the friendly settlement agreement had been signed. On July 18, 2000, the IACHR requested information from the parties on the friendly settlement process. On August 28, 2000, the petitioners submitted their response, which was forwarded to the State for its observations. Whereas the State submitted additional information on January 25, 2001, which was forwarded to the petitioners for their reply. On March 12, 2001, the petitioners requested an extension, which was granted by the IACHR. On September 27, 2001, the State furnished information, which was forwarded to the petitioners for their response.

11. On November 12, 2001, during the 113th Regular Session of the IACHR, a working meeting was convened by the IACHR, which was attended by the Venezuelan State alone. On February 27, 2003, a hearing was held as part of the 117th Regular Session. On March 11, 2003, the State submitted additional information, which was forwarded to the petitioners for their response.

12. On March 3, 2004, in the context of the 119th Period of Regular Sessions, a working meeting was held, where the State raised objections to the settlement agreement of October 1, 1999 and submitted information, which was forwarded to the petitioners for their response. On April 6, 2004, at the request of the petitioners, the IACHR informed the parties about the agreements reached at the working meeting and requested additional information from them.

13. On April 16, 2004, the State submitted additional information to the IACHR, which was forwarded to the petitioners for their response. On April 22, 2004, the petitioners submitted additional information, which was conveyed to the State for its observations. On June 2, 2004, the State and the petitioners submitted additional information, which was forwarded to the parties for their observations.

14. On June 25, 2004, the petitioners conveyed to the IACHR that they intended to definitely terminate the friendly settlement process. These communications were forwarded to the State for its response. On July 14 and October 4, 2004, the State reported that it agreed with the need to enter into a

new agreement, while reaffirming its objections to the settlement agreement executed in 1999, and these letters were forwarded to the petitioners for their response.

15. On January 3, 2005, the petitioners once again requested the Commission to terminate the friendly settlement process. On April 7, 2005, the IACHR forwarded the information to the State for it to submit its response. On May 5, July 18 and September 12, 2005, the State requested extensions, which were granted by the IACHR. On October 28 and December 9, 2005, the State submitted its responses, which were forwarded to the petitioners.

16. On February 6, 2006, the petitioners submitted their arguments on admissibility and the merits, which were conveyed to the State for it to provide its response. On February 8, 2006, the IACHR summoned the parties to a working meeting to be held on March 8, 2006, to which the petitioners responded on February 14, 2006, that they would not participate, reaffirming their request dated February 6, 2006, and this communication was forwarded to the State for its response.

17. On March 8, 2006, a working meeting was held without the participation of the petitioners, where the State submitted additional information, which was forwarded to the petitioners for their response. On May 5, 2006, the IACHR conveyed to the parties, that it was terminating its intervention in the friendly settlement process, and had decided to continue to process the petition, based on the petitioners' communication of February 6, 2006.

18. On June 15, 2006, the petitioners requested an extension to submit their responses to the information submitted by the State at the meeting held on March 8, 2006 at the headquarters of the IACHR, which was granted by the IACHR. On October 11, 2006, the State reported that it was engaged in talks with the petitioners in order to reach a friendly settlement agreement.

19. On December 5, 2006, the IACHR placed itself at the disposal of the parties with a view to reach a friendly settlement in the matter. On March 7, 2007, the petitioners reported that they had renewed the settlement agreement with the State along with a proposal for compliance and submitted information on compliance with the agreement. This communication was forwarded to the State for its response.

20. The petitioners submitted observations on January 12 and February 26, 2008 to the IACHR, which were forwarded to the State on April 14, 2008, along with a request regarding the status of the friendly settlement agreement from both parties. In the second communication, the petitioners considered that the IACHR had all of the elements available to draw up an ACHR Article 49 report. Since that time, the Commission has not received any communications from the parties.

III. FACTS

21. According to the information submitted by the petitioners, in June and July 1993, a group of Brazilian *garimpeiros* allegedly killed, on two separate occasions, a total of 16 Yanomami indigenous persons and wounded another group, in the Haximu region, State of Amazonas, Venezuela, on the border with Brazil.

22. They reported that a group of *garimpeiros* had had contact with the Yanomami at the time in order to exchange items. They noted that in May 1993, an altercation had taken place as a result of disagreements regarding the exchange and, because of that, the *garimpeiros* had decided to make all of the Yanomami return to their camp. They indicated that in mid June, a group of six young people from the Haximu community (Shabono) of the Yanomami People had arrived in the *garimpeiros'* camp to ask for food and other items from *garimpeiro* Pedro Emiliano Garcia. They noted that, after giving them what they requested, he asked them to take a note to another group of prospectors that were camped up river.

They asserted that the Yanomami carried and delivered the note, which said: "Take good advantage of these suckers."²

23. They claimed that after reading the note, the group of *garimpeiros* decided to kill the young Yanomami men. They contended that the *garimpeiros* invited them to hunt and that during a lull; they started to shoot them, murdering three of the young Yanomami men. They indicated that during the incidents, the young Yanomami man Paulo had separated from the group and managed to hide and that another indigenous man named Reikeima, who was wounded, managed to escape. They asserted that while he was hiding in the vegetation, Reikeima observed where the *garimpeiros* had buried the three bodies.³ They indicated that when Paulo Yanomami went to the site of the massacre, with the help of Reikeima, they were able to locate the three bodies that had been buried and cremate them according to their traditions and customs at a site close to the incident location and return their ashes to the community.

24. They noted that after "preparing the ashes," a group of Yanomami, faithful to their customs, went to avenge the death of the four indigenous men, by killing a *garimpeiro* and wounding another one.

25. They stated that out of fear of another strike by the *garimpeiros*, the Yanomami community of Haximu abandoned their lands and set up a temporary camp in the Tapiris forest.

26. They claimed that, according to statements of Pedro Emiliano Garcia, the *garimpeiros* decided to exterminate the Yanomami and had hired gunmen to help them. They noted that they had organized to gather guns and look for the Haximu indigenous people and that when they arrived in the community, it was empty and therefore they continued to search until locating the temporary camp (Tariipi), where the inhabitants of Haximu were staying. They stated that, at that moment, many members of the community had left camp for a ceremony of the Makayutheri community and therefore only elders, pregnant women and children and three male adults had stayed back at the camp.

27. According to the petitioners, pursuant to inter-tribal Yanomami rules, when there is a conflict, the general rule of ethics is to not attack a camp inhabited by women and children. They indicated that the prospectors had surrounded the camp and started to shoot the indigenous people and that, afterwards, they used machetes to mutilate the bodies of the dead and of those who were wounded. According to testimonies introduced by the petitioners⁴ the *garimpeiros* "kicked an elderly blind women to death" and wrapped a baby in a rag and murdered him with a machete. They claimed that on that day the mining prospectors killed a total of twelve Yanomami indigenous persons: one man and two elderly women, a young women from the Homoxitheri community, who was visiting, three adolescent girls, a one-year-old girl and a three-year-old girl and three 6 to 8 year-old boys.⁵ They noted that prior to leaving the site of the massacre; the *garimpeiros* set the camp on fire. They report that the three men from the community managed to escape.

28. They claimed that weeks later, when the *garimpeiros* heard the news of the massacre over the radio, they fled to one of the illegal airfields of the region and arrived in the city of Boa Vista, and they then dispersed to different towns of Brazil.

² Translation of original Portuguese "*faça bom proveito desses otários*", initial petition of December 6, 1996, pg. 2.

³ According to the petitioners, the fourth body was allegedly not found because it had fallen into the Orinoco River and had been carried away by the current.

⁴ The petitioners cited testimonies of indigenous people and *garimpeiros*, initial petition of December 6, 1996, pg. 4.

⁵ The petitioners reported that the names of the victims could not be precisely determined because, in Yanomami culture and beliefs, it is prohibited to repeat the names of the deceased. However, the total number of dead, their approximate ages and their family ties could be ascertained.

29. They asserted that since the beginning of the invasion of *garimpeiros* in the Yanomami area, the mining prospectors would enter into and operate on Venezuelan territory, causing environmental destruction, attacking and perpetrating violent acts against the Yanomami People. They indicated that, at the end of the 1980s when this situation came to the attention of the Venezuelan State, it set up a military post in the area, without sufficient logistical support to bring the situation under control.

30. In light of these facts, and given the State's knowledge of the situation of vulnerability of the Yanomami People as a consequence of the illegal mining activity in the area, the petitioners argued that the State was responsible for the violation of the right to life, humane treatment, a fair trial, property, equal protection and judicial protection, enshrined in Articles 4, 5, 8, 21, 22, 24 and 25 of the American Convention, in conjunction with Article 1.1 thereof.

31. With respect to investigations undertaken in the domestic jurisdiction, the petitioners alleged that Brazilian and Venezuelan authorities travelled to the scene of the crimes in August and September of 1993, and determined that the Haximu village and the temporary camp (Taripi) were located in Venezuelan territory. Following this, the governments of Brazil and Venezuela set up a Bilateral Commission, which decided that both countries should conduct judicial investigations to clarify the facts; notwithstanding, Brazil would be the one to try those responsible for the massacre because Brazilian law allows extraterritorial application of criminal law⁶ for the crime of genocide⁷ committed by its nationals in foreign countries. They contended that Venezuela unlawfully disregarded the principle of territoriality, inasmuch as Article 3 of the Venezuelan Criminal Code obligates the State to punish crimes or misdemeanors committed in its territory.

32. They noted that judicial investigation No. 93-4014 was opened in Venezuela in September 1993, before the Criminal Trial Court of the Judicial District of the State of Amazonas, in Puerto Ayacucho, State of Amazonas. They asserted that in late September a judicial commission travelled to the scene of the crimes to gather evidence, and the investigations continued through 1994 and 1995; however, by 1996, the judicial investigation was still in the preliminary investigation phase and nobody had been charged with the crimes.

1. Criminal Proceedings in Brazil

33. The petitioners noted that criminal action was brought in Brazil in the Federal Jurisdiction of Boa Vista, State of Roraima, before the Federal Court of Roraima. This court ordered the arrest of 24 *garimpeiros*, who allegedly took part in the massacre, against whom the Office of the Public Prosecutor had brought charges of genocide and other crimes.

34. By way of context, it must be noted that on December 6, 1996, the IACHR received a petition alleging responsibility of the Brazilian State for negligence and omission with regard to the massacre, which is the subject of the instant report. On July 21, 2011, the Commission decided to archive said petition in Report No. 88/11.

⁶ Article 7.1(b) of the Brazilian Criminal Code.

⁷ Brazilian legislation includes a specific provision on genocide, Law No. 2889 of 1/10/56, which provides:

"Article 1. Any person who has the intent to destroy, totally or partially, a national ethnic, racial or religious group with actions such as:

- a) Killing members of the group.
- b) Causing serious harm to the physical or mental integrity of members of the group.
- c) Intentionally subjecting the group to conditions of existence capable of causing total or partial destruction of it.
- d) Adopting measures aimed at preventing births within the group.
- e) Carrying out the forced transfer of children of the group to another group (...)"

35. In said report, the IACHR noted that the Brazilian judicial authorities, in a trial court judgment of September 1, 2009, acquitted two of the defendants for lack of evidence and convicted five *garimpeiros*⁸ sentencing them to jail terms of 20 years and six months for the crimes of genocide and association for the purpose of genocide, with the aggravating factors set forth by Law 8.072/90, the Heinous Crimes Act (*Lei dos Crimes Hediondos*). The aforementioned judgment was overturned on appeal by the Federal Regional Court of the First Region ("TRF"), which decided that original jurisdiction to try the crimes fell to the regular state courts, through a trial by jury, and not by a federal judge. Said decision was issued on June 30, 1998.⁹

36. It was additionally noted that in its judgment of November 12, 2000, the Superior Court of Justice ("STJ") established that genocide is a special crime, which consists of the intentional destruction of human racial, religious or national groups in accordance with the Convention on the Prevention and Punishment of the Crime of Genocide, ratified by Brazil in 1952. The STJ held that "all actions characteristic of the crime of genocide are not within the competence of a jury trial, in that such crimes are directed not against the life of the individual alone but rather against a group or part of a group of persons,"¹⁰ and that consequently, "the legal right being protected is the life in common of the groups of men, the community of peoples, i.e., the ethnic group."¹¹ This decision of the STJ, with regard to the original jurisdiction to try the crime of genocide, was appealed by the convicted defendants, and the appeal was denied by the Federal Supreme Court ("STF"). Later, the TRF handed down a decision on the merits of the appeals upholding the trial court convictions; and added the additional sentence of one year and two months of confinement for the crime of "destruction, theft and concealment of a body." This decision became *Res Judicata* on November 3, 2009, under which the perpetrators of the crimes of genocide against the Yanomami People were sentenced in a final judicial decision.¹²

IV. FRIENDLY SETTLEMENT

37. The friendly settlement agreement between the Venezuelan State and the petitioners, which was executed by the parties on October 1, 1999¹³ and ratified on December 10, 1999, establishes the following terms:

1. On surveillance and control of the Yanomami area.

- The State undertakes to promote the signing of an agreement with the government of Brazil to establish a Joint and Permanent Surveillance and Control Plan to monitor and control the entry of *garimpeiros* and illegal mining in the Yanomami area.

2. On the health situation of the Yanomami People.

- The State undertakes: to design, fund and put into operation, through the Ministry of Health and in Coordination with the Regional Council of Health of the State of Amazonas, an Integrated Health program targeted to the Yanomami People, to confront the serious health issues of the area. The program shall include, among other aspects, the construction of infrastructure, provision of medical equipment and training of members of the ethnic group.
- The State undertakes to allocate an annual budget administrated by the Regional Council of Health for execution of the Program that has been adopted herein.

⁸ IACHR. Report No. 88/11 Archive. Petition No. 11.745 (Brazil) of July 21, 2011, para. 14.

⁹ IACHR. Report No. 88/11 Archive. Petition No. 11.745 (Brazil) of July 21, 2011, para. 14.

¹⁰ IACHR. Report No. 88/11 Archive. Petition No. 11.745 (Brazil) of July 21, 2011 para. 14.

¹¹ IACHR. Report No. 88/11 Archive. Petition No. 11.745 (Brazil) of July 21, 2011 para. 14.

¹² IACHR. Report No. 88/11 Archive. Petition No. 11.745 (Brazil) of July 21, 2011 para. 14.

¹³ The friendly settlement agreement was ratified in Venezuela on December 10, 1999; signing for the State: Raul Arrieta, Agent for the Venezuelan State and for the petitioners: Luis Jesus Bello, Coordinator Office of Human Rights, Vicariate Puerto Ayacucho and Luz Patricia Mejia PROVEA.

3. On the judicial investigation of the massacre.

- The State undertakes to monitor the judicial investigation of the criminal proceeding that was brought in Brazil, in order to establish responsibility and to apply the corresponding criminal sanctions.
- The State undertakes to periodically communicate with the Inter-American Commission and the petitioners on steps taken and on the status of the judicial proceedings in Brazil.

4. On legislative measures for the protection of indigenous peoples.

- The Government undertakes to examine and promote ratification of ILO Convention No. 169, On Protection of Indigenous and Tribal Peoples in Independent Countries, which is currently before the Congress of the Republic for approval.

5. On the appointment of an expert in indigenous matters.

- The State undertakes to appoint, in consultation with the petitioners, an expert in indigenous matters, to ensure execution of the items of the agreement.

The parties undertake to submit on December 10 of this year (1999), to the Honorable Commission, a report on the progress of these agreement items, as well as the final timeline for the execution thereof.

38. With regard to item 1 of the agreement, on January 25, 2001, the State reported that the area had received protection and no incidents, such as the type that prompted the petition to be lodged, had occurred; regarding item 2, it informed that a commission was set up to investigate complaints of violations and the current situation of the Yanomami who were the beneficiaries of the Health Plan; the State did not report on items 3 to 5. Additionally, it submitted the Strategic Integrated Health Plan for the Yanomami People, which was drafted by the Ministry of Health and Social Development and approved on March 26, 2000; the "Sierra de Unturan Support Unit" Project, which was approved in June 2002, and aimed to provide medical care to the Yanomami of the Unturan mountain range; and the "Cadena de Frio" Project, which was approved in June 2001, for the storage and transportation of vaccines in areas of the State of Amazonas. With regard to item 4, the State ratified ILO Convention 169 on May 22, 2002.

39. However, as of the working meeting held on March 3, 2004, the State disregarded the terms of the settlement agreement, particularly items 1 and 3; reaffirming the need to enter into a new agreement. On April 20, 2004, the petitioners considered that, except for ratification of ILO Convention 169, the friendly settlement agreement had not been fulfilled. On June 25, 2004, the petitioners requested the friendly settlement process to be terminated and to continue with processing the petition, inasmuch as they considered the State to have breached the agreement and because the State was questioning the legality thereof.

40. In July 2004, the State reaffirmed its objection to the agreement, as it considered that friendly settlement agreements "require that due respect for the sovereignty of the State be preserved," and that it had not been duly considered at the time of the signing of the agreement. Notwithstanding, it remained willing to engage in dialogue with the petitioners. Its objection revolved around the obligation of the State to allocate a special budget amount, because it considered budget allocation as a power that was exclusive to the Government of a State, and that it could not be subject to negotiation. In October 2004, the State further argued that the agent of the State who signed the settlement agreement had overstepped his powers in allocating an annual budget for execution of the Integrated Health Program for the Yanomami People.

41. On February 6, 2005, the petitioners reaffirmed their position. On March 10, 2006, a working meeting was held, during which the State submitted a report on social impact achievements in

2005-2006 as a result of the Coordination of Indigenous Health and five progress reports on the Yanomami Health Plan.¹⁴

42. In light of the petitioners' request, on May 5, 2006, the Commission terminated its intervention in the friendly settlement process and resolved to continue processing the petition. Nonetheless, in November 2006, the State reported that it had stated its willingness to work out a friendly settlement agreement in talks with the petitioners. Consequently, in December 2006, the IACHR once again placed itself at the disposal of the parties with a view to reach a friendly settlement between the parties.

43. On March 7, 2007, the petitioners reported that they resumed the friendly settlement process with the State based on a proposal for compliance and submitted information regarding agreement compliance. The compliance proposal related to surveillance and control of the Yanomami area and the Yanomami health plan. On January 12, 2008, the petitioners submitted a narrower proposal, consisting of the following points:

1. On surveillance and control of the Yanomami area.
 - 1.1. Prevention measures and permanent control of the entry of *garimpeiros* and illegal mining activity in the Yanomami area must be strengthened, especially in the Municipality of Rio Negro where there is an uncontrolled mining presence, [that is] located on indigenous habitat and [is] under special protection.
2. On the Yanomami People's Health Plan.
 - 2.1. Coordination, monitoring, follow-up and evaluation of objectives, goals, and actions stemming from the Yanomami Health Plan must be strengthened. For this purpose, it is necessary to define and implement a structural process and results indicator system, to make it possible to monitor and evaluate the actions taken and results of the Plan from a legal perspective in a timely and effective way.
 - 2.2. Measures aimed at ensuring the expansion of health care services coverage benefitting Yanomami communities with a medium to high degree of difficulty of access must be strengthened.
 - 2.3. Continuity of the Health Training Programs must be ensured, with an intercultural approach benefitting the Yanomami people and other indigenous ethnic groups.
 - 2.4. Financial sustainability of the Yanomami Health Plan must be ensured.¹⁵

44. On February 26, 2008, the petitioners addressed the IACHR in the following terms:

The petitioners in the case of reference consider that the IACHR has all the elements available to draw up an ACHR Article 49 Report. In this regard, we consider that said report should expressly mention the agreements reached by the parties in the process, both the agreement that was entered into at the beginning of the process, and the one drawn up at the working meeting and the submission filed with the IACHR in March 200[7].¹⁶

V. DETERMINATION OF COMPATIBILITY AND IMPLEMENTATION

45. The friendly settlement process provided for in Articles 48.1.f) and 49 of the American Convention makes it possible to end individual cases in a non-contentious manner and has proven, in cases regarding several countries, to offer an important and effective vehicle for settlement that can be used by both parties. The IACHR establishes that the adoption of this procedure in the instant case is aimed at "reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in the Convention" and that the agreement reached between the parties is fully compatible with the obligations emanating from the American Convention. The agreement to engage in this procedure expresses the good faith of the State when it comes to carrying out the purposes and

¹⁴ First Report: January-February 2005, Second Report: March-April 2005, Third Report: October 2005, Fifth Report: Activities of January 26 to February 2, 2005, and Latest Advancements 2006-2007.

¹⁵ Submission of the petitioners of January 12, 2008.

¹⁶ Submission of the petitioners received on February 26, 2007.

objectives of the Convention, in keeping with the principle of *pacta sunt servand*, whereby States must fulfill in good faith the obligations undertaken by them in treaties.

46. The Commission considers that the terms of the agreement reproduced *verbatim* above are compatible with the obligations emanating from the American Convention on Human Rights and, therefore, decides to approve the aforementioned agreement.

47. Hereafter, the Commission will specifically address each aspect of the agreement entered into by the parties and the level of implementation of the instant friendly settlement pursuant to the information provided by the parties.

1. On surveillance and control of the Yanomami area.

The State undertakes to promote the signing of an agreement with the government of Brazil to establish a Joint and Permanent Surveillance and Control Plan to monitor and control the entry of *garimpeiros* and illegal mining in the Yanomami area.

48. The IACHR recognizes the willingness of the State of Venezuela to honor its commitment to provide surveillance and control over the Yanomami area, in drafting and implementing the National Strategic Plan for the Defense, Development and Consolidation of the South (PENDDCS),¹⁷ which aims to increase the presence of the armed forces in the southern region of the country, in the States of Apure, Amazonas, Bolívar and Delta Amacuro, and the areas bordering Brazil, Colombia and Guyana, and improve the security, protection health and education of 34 ethnic indigenous groups and the population that inhabits the region.¹⁸

49. In this regard, the petitioners noted that “compared to when the crimes occurred, where there was an uncontrollable influx of *garimpeiros* in Yanomami territory, over 2,000 of them, the situation has changed and it has been reduced significantly.”¹⁹

2. On the health situation of the Yanomami People.

¹⁷ The State reported that the National Strategic Plan for the Defense, Development and Consolidation of the South (PENDDCS, as it is known by its Spanish initials) encompasses: a) installation of radar for effective control and surveillance of air space; b) development of the air bases: La Esmeralda, San Salvador de Paul and Tumeremo and repair of the pavement and aviation fuel supply facilities on the runways of San Fernando de Atabapo, Maroa, San Carlos de Río Negro, San Juan de Manapiare and Parima B in the State of Amazonas; Puerto Paez in the State of Apure; Caicara, Asiasito, Tumereno San Salvador de Paul and Luepa in the State of Bolívar and Tucupita in the State of Delta Amacuro; c) installation of a communication system for 18 indigenous communities, consisting of equipment with VHF, UHF, HF frequency ranges, with data transmission and internet access capability; d) improvement of the La Esmeralda air base, to provide it with a control tower with flight assistance systems, runway lights, 18,000 lts and 4,000 lts of Avesgas tanks, and construction of permanent fuel tanks (it is noted that the La Esmeralda base allows arrivals, with a stop in Parima B, in more remote towns of the Yanomami territory); e) activation of Air Transport Group No. 9, with the acquisition of 19 airplanes, fifteen of them Cessna 206 types and the other four of them Cessna 208 Gran Caravan, for the transport of personnel, cargo and ambulatory medical care service, organized into three squadrons operating out of Puerto Ordaz, Puerto Ayacucho and La Esmeralda; f) construction of housing and hangers at the units of Puerto Ayacucho and La Esmeralda; g) prompt activation of one jungle infantry brigade and five battalions and the installation of 21 land bases, 39 river bank bases as part of the civilian military design of the Civilian Military Center for Endogenous Development “CCMDE” for its Spanish initials; h) conducting aerial reconnaissance operations in the States of Amazonas and Bolívar where illegal mining activity was detected and neutralized; and additionally i) support for the Ministry of Health, in transporting 25 indigenous people to take nursing courses and, for the Ministry of Education, by transporting teaching materials, furnishings and food to the municipalities of southern Bolívar and Amazonas States, j) a first stage investment of 40 million USD; k) holding the induction course for personnel to join the Plan for the Defense, Development and Consolidation of the South. On this topic, see the document “Plan Estratégico Nacional para la Defensa, Desarrollo y Consolidación del Sur” [‘National Strategic Plan for the Defense, Development and Consolidation of the South’] and annexes. Information submitted by the State at the working meeting of March 10, 2006.

¹⁸ In this regard, see the document “Plan Estratégico Nacional para la Defensa, Desarrollo y Consolidación del Sur” [‘National Strategic Plan for the Defense, Development and Consolidation of the South’], pg. 1. Information provided by the State at the working meeting of March 10, 2006.

¹⁹ Submission of the petitioners received on March 7, 2007.

- The State undertakes: to design, fund and put into operation, through the Ministry of Health and in Coordination with the Regional Council of Health of the State of Amazonas, an Integrated Health program targeted to the Yanomami People, to confront the serious health issues of the area. The program shall include, among other aspects, the construction of infrastructure, provision of medical equipment and training of members of the ethnic group.
- The State undertakes to allocate an annual budget administrated by the Regional Council of Health for execution of the Program that has been adopted herein.

50. The IACHR recognizes the willingness of the State of Venezuela to improve the health situation of the Yanomami people, in drafting, funding and progressively executing the Yanomami Health Plan²⁰ and implementing in complementary fashion the Sierra Unturan Support Program,²¹ the "Cadena de Frio" Project²² and the Intercultural Health Program with the Indigenous Peoples and Communities of Venezuela.²³

51. In response, the petitioners recognize significant gains as well as issues that must still be strengthened in the framework of the Yanomami Health Plan, which has been implemented since 2005 in the Municipality of Alto Orinoco (Upper Orinoco), State of Amazonas. They noted that as of 2005, there has been evidence of a significant recovery of the ambulatory care network of the Health District of the Upper Orinoco.²⁴ They indicated that by 2007 the number of doctors increased to eight and, therefore, they recognize the measures taken by the State as positive steps toward ensuring wider coverage of primary medical care for the Yanomami. They noted that there were a higher number of vaccination days and expeditious fixes to failures in operations of the ambulatory care network. Notwithstanding, it was pointed out that there are still signs of problems with regard to accessibility to health care services and, therefore, coordination, monitoring and follow-up on the Health Plan needs to be strengthened.

52. The IACHR notes the following aspects of implementation of the Health Plan for the Yanomami People: a) improvement of the health care infrastructure at Dr. Jose Gregorio Hernandez Type II Hospital, of the State of Amazonas, Puerto Ayacucho,²⁵ recovery of the ambulatory care network²⁶ and

²⁰ The State reported that the Yanomami Health Plan was drafted by the Ministry of Health and Social Development with the collaboration of several institutions since 1999, the final version being approved on March 26, 2000, under the name "Strategic Integrated Health Plan for the Yanomami People," funded with 1.500.000.000.00 [Bolivars]. Submission of the State of September 27, 2001.

²¹ The State reported that the purpose of the Sierra Unturan Support Program is to provide medical care to Yanomami populations of the Unturan mountain areas. Submission of the State of September 27, 2001.

²² The State reported that the purpose of the Cadena de Frio Project is to store and transport vaccines in the State of Amazonas. Submission of the State on September 27, 2001.

²³ The State reported that the Intercultural Health Program with the Indigenous Peoples and Communities of Venezuela is made up of 22 Venezuelans, including professionals and university students; of which 18 are indigenous, representing 13 different ethnic groups. The program is responsible for dealing with the following areas: Nutritional Food Situation, Inmuno-prevention of disease, and the Bio-psycho-cultural Integrity of Health and Life. It is funded with 1.2 million bolivars. Submission of the State of June 2, 2004.

²⁴ The petitioners highlighted the recovery of six rural ambulatory care type II units (ARII), the acquisition of four out-board motor boats, several solar energy supply generators and radio communication equipment, the assignment of a team of health care professionals, one dental surgeon and a Chief of Health District of the Upper Orinoco River. Submission of the petitioners received on March 7, 2007.

²⁵ The State reported that work completed at "Dr. Jose Gregorio Hernandez Hospital II, included: opening of the adult emergency area (in November 2002); remodeling the operating room area, the pre-labor and labor admissions room, the recovery room and the intermediate care area (completed in October 2003); the delivery of an emergency electricity unit (in October 2003); opening the emergency pediatrics area (in March 2004). See "Report on activities of the Ministry of Health and Social Development for Compliance with the National Health Plan for the Yanomami People," pg. 4. Annex to the Submissions of the State of March 3, 2004.

²⁶ The State reported that in the Health District of the Upper Orinoco, the following progress has been made: a) regarding personnel: 6 rural doctors are available, 1 dental surgeon, 1 district chief (specialist); b) as for inputs: there is greater regularity in access to resources from the central office (i.e. SEFAR/SUMED); c) with regard to logistics: six operational ARIIs with engine and flier, operational communications radios, 2 4T engines donated by PAHO and two other 4T engines. On this topic see the document

the increase of medical and assistance personnel²⁷ in the Health District of Alto Orinoco [Upper Orinoco]; installation of Indigenous Health Offices for the care of indigenous patients through bilingual facilitators, in the Autonomous Services of the University Hospital of Maracaibo (SAHUM), at the Hospital Ruiz y Pez in Ciudad Bolívar, at Hospital Luis Razzeti in Tucupitá²⁸ and at Dr. Jose Gregorio Hernandez Hospital;²⁹ implementation of Intercultural Lodging homes in the Cardozo Sector of Ciudad Bolívar³⁰ and Puerto Ayacucho;³¹ b) supplying of medications to the indigenous communities of the municipality of Alto Orinoco, Amazonas; the municipality of Machiques de Perija, Zulia; the municipality of Romulo Gallegos, Apure; State Delta Anacaro, Monagas, Anzoategui and Zulia, Mision Guacaipuro; municipality of Gran Sabana and Piar, Bolívar; Indigenous Peoples of the State of Monagas; municipality of Achaguas, Muñoz, Páez, Pedro Camejo; municipality of Cedeño and Gran Sabana, State of Bolívar;³² c) expansion of coverage of the health care system to indigenous communities of the area of the Delgado Chalbaud river and the Yanomami communities of the lower Siapa river in the municipality of Rio Negro of the State of Amazonas;³³ d) several operations and visits conducted by the multidiscipline team of the Ministry of Health through the Visual Health Program of the Coordination of Indigenous Health, to treat vision and dental conditions and to provide comprehensive intercultural medical care in different indigenous communities;³⁴ e) implementation of the Strategic Immunization Plan for yellow fever in the State of Bolívar in conjunction with the Expanded Immunization program of the Ministry of health; f) implementation of the following training and education courses: "Induction Course for Doctors in Indigenous Communities," "Post Graduate degree in General Medicine (MGI), General Integrated Odontology (OGI) of the Barrio Adentro Mission and Post Graduate Degree in Epidemiology at the Institute of Advanced Studies in Public Health (IAESP), Specialization in Public Health Management IAESP/Ministry of Health;" "Intercultural Training Program for Indigenous Health Care Assistance," "Integrated Community Doctor Training Program," "Intercultural Health Courses," and lastly g) implementation of an Office of Coordination for the Yanomami Health Plan, which includes: a General

...continuation

"Social Impact Achievements obtained in 2005-2006. Health Coordinator," pg. 2. Information submitted by the State at the working meeting on March 10, 2006.

²⁷ The State reported that medical and assistance personnel in the Upper Orinoco, State of Amazonas, was increased with 8 ARII [Rural Ambulatory Type Two], 15 doctors, 3 registered nurses and one dental surgeon. On this topic, see the document "Yanomami Health Plan, latest progress 2006-2007," pg. 1. Information submitted by the State at the working meeting on March 10, 2006.

²⁸ See the document "Social Impact Achievements obtained in 2005-2006. Health Coordinator," pg. 4. Information submitted by the State at the working meeting on March 10, 2006.

²⁹ See the document "Yanomami Health Plan, latest progress 2006-2007," pg. 16. Information submitted by the State at the working meeting on March 10, 2006.

³⁰ See the document "Social Impact Achievements obtained in 2005-2006. Health Coordinator," pg. 5. Information submitted by the State at the working meeting on March 10, 2006.

³¹ See the document "Social Impact Achievements obtained in 2005-2006," pg. 16. Information submitted by the State at the working meeting on March 10, 2006.

³² See the document "Social Impact Achievements obtained in 2005-2006. Health Coordinator," pg. 10. Information submitted by the State at the working meeting on March 10, 2006.

³³ See the document "Social Impact Achievements obtained in 2005-2006. Health Coordinator," pg. 8. Information submitted by the State at the working meeting on March 10, 2006.

³⁴ The State noted that from September 16 to 20, 2005, a multi-discipline team from the Ministry of Health, through the Visual Health Program, Coordination of Indigenous Health, conducted an operation to treat the most common conditions of the community in Canaima National Park, State of Bolívar, providing eye care to 140 patients. On October 14 of the same year, a second visit was conducted to follow-up and evaluate each case. From September 16 -20, 2005, 185 patients in the community of Canaima received ophthalmological care. In the region of Kanaimo-Kamarat-Kavac-Isla Ratón, 300 patients received care. From October 10 to 15, 2005, 36 indigenous Pume (Yaruros), in the same community received food and nutritional assistance in keeping with the eating habits of these communities. Comprehensive and intercultural medical care was provided in Bokshi y Shirapta, indigenous communities of Barí and Yukpa respectively, in the city of Maracaibo, capital of the State of Zulia, in the municipality of Mara, the communities of the Pemón de Kamarata, Kavak Canaima People in the State of Bolívar, including the Yanomami communities located in the municipality of Orinoco of the State of Amazonas. See the document "Social Impact Achievements obtained in 2005-2006. Health Coordinator," pg. 8. Information submitted by the State at the working meeting on March 10, 2006.

Coordinator, Medical Coordinator, Training Coordinator, Logistics Coordinator and investigation and monitoring assistance for health interventions.

3. On the judicial investigation of the massacre.

- The State undertakes to monitor the judicial investigation of the criminal proceeding that was brought in Brazil, in order to establish responsibility and to apply the corresponding criminal sanctions.
- The State undertakes to periodically communicate with the Inter-American Commission and the petitioners on steps taken and on the status of the judicial proceedings in Brazil.

53. As for the judicial investigation of the massacre, the IACHR notes that investigations were opened in Brazil and Venezuela, and that those allegedly responsible for the murders were tried by Brazilian courts. Furthermore, on December 19, 1996, the TRF issued a judgment convicting five *garimpeiros* to 20 years and six months in prison for the crime of genocide in connection with other crimes, such as running contraband and illegal prospecting (*garimpo*). On August 2, 2006, the STF upheld this decision, which became *res judicata* on November 3, 2009. In this regard, the IACHR notes that the investigation of the massacre that is the subject of the instant report culminated in the punishment of those responsible.

4. On legislative measures for the protection of indigenous peoples.

The Government undertakes to examine and promote ratification of ILO Convention No. 169, On Protection of Indigenous and Tribal Peoples in Independent Countries, which is currently before the Congress of the Republic for approval.

54. In this regard, the petitioners recognized progress made by the State with regard to legal protections of indigenous peoples. The IACHR recognizes the willingness of the Venezuelan State to fulfill its commitment to promote legislative protection measures for Indigenous Peoples, in approving ILO Convention 169³⁵ in 2000, incorporating them into Chapter VIII, pertaining to the Rights of Indigenous Peoples,³⁶ of the 1999 Venezuelan Constitution, and approving the Organic Law of Indigenous Peoples and Communities.³⁷

5. On the appointment of an expert in indigenous matters.

The State undertakes to appoint, in consultation with the petitioners, an expert in indigenous matters, to ensure execution of the items of the agreement.

55. The Commission recognizes the willingness of the Venezuelan State to abide by the agreement in appointing an expert on indigenous matters by creating the Office of Coordination of the Indigenous Health Plan for the execution of the Yanomami Health Plan³⁸ and the Ministry of Popular Power for Indigenous Peoples.³⁹

VI. CONCLUSION

³⁵ Official Gazette No. 37.305 on October 17, 2001.

³⁶ Official Gazette on December 30, 1999.

³⁷ Official Gazette No. 38.344 dated December 27, 2005.

³⁸ In 2005, the State implemented the Office of the Coordination of the Yanomami Health Plan, which is made up of the following positions: General Coordinator, Medical Coordinator, Training Coordinator, Coordinator of Logistics and Investigation and Monitoring Assistance for Health Interventions. Information from the State of October 11, 2006.

³⁹ Submission of the petitioners received on February 26, 2007.

56. The Commission greatly appreciates the efforts made by both parties in reaching this settlement, which is consistent with the objective and aim of the Convention. The friendly settlement process set forth in the American Convention makes it possible to bring individual cases to an end in a non-contentious manner and has proven to be an effective proceeding for the parties.

57. It must be noted that in adopting its decision, the Commission is taking into consideration that on October 11, 2006, the State reported to be engaged in talks with the petitioners in order reach a friendly settlement agreement and that on March 7, 2007, the petitioners reported that they had reinstated the settlement agreement with the State. It is also considering that on February 26, 2008, the petitioners expressly requested the instant report to be issued, and this request was forwarded to the State for its response, with no reply being received as of the date of approval of the present report.

58. Pursuant to the authority vested in it under the Convention and its Rules of Procedure, based on the foregoing considerations and in accordance with the procedures set forth in Articles 48.1.f) and 49 of the American Convention, the Commission wishes to reiterate its deep appreciation for the efforts made by the parties and its satisfaction at the achievement of the friendly settlement agreement in this case, which is rooted in the objective and aim of the American Convention.

59. Based on the considerations and conclusions set forth in this report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To approve the terms of the friendly settlement agreement reached by the parties with the respective changes.

2. To publish this report and include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 20th day of the month of March, 2012.
(Signed): José de Jesús Orozco Henríquez, President; Tracy Robinson, First Vice-Chair; Felipe González, Second Vice-Chair; Dinah Shelton, Rodrigo Escobar Gil, Rosa María Ortiz, and Rose-Marie Antoine, member of the Commission.