



**MINISTÉRIO PÚBLICO FEDERAL**  
**PROCURADORIA DA REPÚBLICA NO ESTADO DE RORAIMA**

Ofício n.º 022/2005 – MF/MPF/PR/RR

Boa Vista – RR, July 29th, 2005.


Subject: Yanomami blood samples.

**Dear Madam,**

In the 1960s and 1970s, Dr. James Neel and other U.S. scientists collected blood samples from the Yanomami Indians in Brazil and Venezuela. In 2002, Yanomami leaders in Brazil requested the Attorney General's Office (responsible for the legal defense of the interests and rights of indigenous peoples in the country) to take the necessary steps to locate and retrieve those samples taken from their deceased relatives, as well as the genetic material that might have been derived from the samples.

In March 2002 we wrote to Professor Kenneth Weiss at the Department of Anthropology in your University requesting information about whether or not there were Yanomami blood samples at Penn State. On April 8th 2002 Professor Weiss confirmed that there were three thousand Yanomami samples in his lab at Penn State.

Both the samples and the genetic material represent for the Yanomami the remains of their relatives which need to go through the proper funeral ceremonies. They take these ceremonies to be essential not only to the deceased's spiritual peace, but also to the respect of their culture. According to the Brazilian authorities who are following the case, in collecting these samples the researchers did not observe the norms established by the international codes of bioethics (The 1947 Nuremberg Code, and the 1964 Helsinki I

  
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**MINISTÉRIO PÚBLICO FEDERAL**

**PROCURADORIA DA REPÚBLICA EM RORAIMA**

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Declaration). Considering that the samples are at present being used for the extraction of genetic material, again without the consent of the Yanomami, I henceforth ask you whether your institution might agree to willingly return those blood samples and genetic material to the Yanomami who made the original request. I would also like to request that you keep us informed about possible cases of exchange of Yanomami blood and/or genetic material between your University and other institutions.

We take this opportunity to thank Penn State and Professor Weiss for the attention given to our queries and to express our conviction that we can have your cooperation in the future.

Enclosed you will find a copy of the Brazilian Constitution attesting to the legitimacy of the Attorney General's Office to pose these questions.

Yours sincerely,

  
**MAURÍCIO FABRETTI**  
Deputy Attorney of Brazil

terms of the respective law, for the selection of their Attorney-General, who shall be appointed by the Head of the Executive Power for a term of office of two years, one reappointment being allowed.

Paragraph 4 - The Attorneys-General in the states, in the Federal District and the Territories may be removed from office by deliberation of the absolute majority of the Legislative Power, under the terms of the respective supplementary law.

Paragraph 5 - Supplementary laws of the Union and of the states, which may be proposed by the respective Attorneys-General, shall establish the organization, the duties and the statute of each Public Prosecution, observing, as regards their members:

I - the following guarantees:

- a) life tenure, after two years in office, with loss of office only by a final and unappealable judicial decision;
- b) irremovability, save for reason of public interest, through decision of the competent collegiate body of the Public Prosecution, by the vote of two-thirds of its members, full defense being ensured;
- c) irreducibility of compensation, stipulated according to article 39, paragraph 4, and with due regard for the provisions of articles 37, X and XI, 150, II, 153, III, 153, paragraph 2, I;

II - the following prohibitions:

- a) receiving, on any account or for any reason, fees, percentages or court costs;
- b) practicing the legal profession;
- c) participating in a commercial company, under the terms of the law;
- d) exercising, even when on paid availability, any other public function, except for a teaching position;
- e) engaging in political or party activities, save for the exceptions established in the law.

**Article 129.** The following are institutional functions of the Public Prosecution:

I - to initiate, exclusively, public criminal prosecution, under the terms of the law;

II - to ensure effective respect by the Public Authorities and by the services of public relevance for the rights guaranteed in this Constitution, taking the action required to guarantee such rights;

III - to institute civil investigation and public civil suit to protect public and social property, the environment and other diffuse and collective interests;

IV - to institute action of unconstitutionality or representation for purposes of intervention by the Union or by the states, in the cases established in this Constitution;

V - to defend judicially the rights and interests of the Indian populations;

VI - to issue notifications in administrative procedures within its competence, requesting information and documents to support them, under the terms of the respective supplementary law;

**Article 126.** For the settlement of conflicts relating to land property, the Court of Justice shall designate special level judges, with exclusive competence for agrarian matters.

Sole paragraph - Whenever efficient jurisdictional service requires it, the judge shall go personally to the site of the litigation.

## CHAPTER IV The Functions Essential to Justice

### SECTION I The Public Prosecution

**\*Article 127.** The Public Prosecution is a permanent institution, essential to the jurisdictional function of the State, and it is its duty to defend the juridical order, the democratic regime and the inalienable social and individual interests.

Paragraph 1 - Unity, indivisibility and functional independence are institutional principles of the Public Prosecution.

Paragraph 2 - The Public Prosecution is ensured of functional and administrative autonomy, and it may, observing the provisions of article 169, propose to the Legislative Power the creation and abolishment of its offices and auxiliary services, filling them through a civil service entrance examination of tests or of tests and presentation of academic and professional credentials, the remuneration policies, and the career plans; the law shall provide for its organization and operation.

Paragraph 3 - The Public Prosecution shall prepare its budget proposal within the limits established in the law of budgetary directives.

**\*Article 128.** The Public Prosecution comprises:

I - the Public Prosecution of the Union, which includes:

- a) the Federal Public Prosecution;
- b) the Labour Public Prosecution;
- c) the Military Public Prosecution;
- d) the Public Prosecution of the Federal District and the Territories;

II - the Public Prosecutions of the states.

Paragraph 1 - The head of the Public Prosecution of the Union is the Attorney-General of the Republic, appointed by the President of the Republic from among career members over thirty-five years of age, after his name has been approved by the absolute majority of the members of the Federal Senate, for a term of office of two years, reappointment being allowed.

Paragraph 2 - The removal of the Attorney-General of the Republic, on the initiative of the President of the Republic, shall be subject to prior authorization by the absolute majority of the Federal Senate.

Paragraph 3 - The Public Prosecutions of the states, of the Federal District and the Territories shall prepare a list of three names from among career members, under the

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\* CA 19/98.



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January 3, 2006

Mauricio Fabretti  
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n° 1255 - São Francisco  
CEP 69305-130  
BRAZIL

**In Re: Yanomami blood samples**

Dear Señor Fabretti:

Thank you for your letter dated July 29, 2005. The University has had the opportunity to closely study the issues at hand, and the history of correspondence regarding this matter. We would like to emphasize that it is the University's intention to fully cooperate with all relevant government authorities regarding this matter and to respect and honor all applicable laws, regulations, and cultural norms.

The University and its researchers take the obligation to protect human subjects extremely seriously, this being especially so in the case of indigenous people. Our researchers have determined that under the circumstances, and until the samples under the control of the university can be returned to their rightful owners, no further research, reporting of research results, or transfer of the samples to other researchers will occur regarding these samples. Further, we will use all reasonable care as custodians of these samples until a mutually agreeable disposition has been determined.

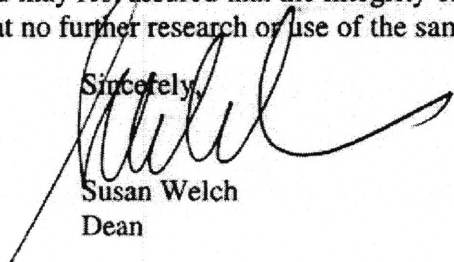
We believe it is important that all potential "stakeholders" (any persons with a legal interest in, or obligation regarding any of the samples) are in full agreement with any plan to transfer custody of any of the samples in Penn State's possession to any third party. At a minimum, we anticipate that this will involve both the Brazilian and Venezuelan governments, but we also seek confirmation from those governments as to the interests of any other local recognized governing authorities, and that all such authorities have expressly approved the return of all samples. This would include any involved tribal councils, elders, and similar tribal authorities.

Mauricio Fabretti  
January 3, 2006  
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In this light, we would like to inquire with you whether you have been able to develop a proposed protocol for the return of the samples that ensures the interests of all relevant stakeholders have been addressed? If so, we believe it is essential that such a written document would be expressly approved by all such stakeholders. Only in this fashion could the University ensure that it has appropriately discharged any responsibilities it may have to each and every interested party.

We look forward to working with you in identifying and corresponding with these stakeholders, and in the meantime, you may rest assured that the integrity of the samples will be safeguarded by the University, and that no further research or use of the samples will take place.

Sincerely,



Susan Welch  
Dean

cc: E. Pell  
C. Yekel  
M. Righter