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## **The violations of the Chiquitano Indigenous People rights: a case for protection by the Inter-American System of Human Rights**

*As violações dos direitos do povo indígena Chiquitano: um caso de proteção pelo Sistema Interamericano de Direitos Humanos*

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## Abstract

This paper aims to investigate the agrarian conflict in the traditional lands inhabited by Chiquitano Indigenous Peoples on the Brazil-Bolivia border. It seeks to determine whether there are human rights violations and whether the Chiquitano case fulfils the necessary requirements to be analysed by the Inter-American System of Human Rights (IASHR). In the first section of the paper we present an ethnographic study conducted between the years 1970 to 2017, in order to understand the agrarian conflict that occurs in Chiquitano lands. In particular, the paper focuses on four Chiquitano communities: Fazendinha and Acorizal, Vila Nova Barbecho, Nossa Senhora Aparecida, and the Aldeia Urbana Aeroporto Hitchi Tuúrrs. The second section introduces the international norms of human rights protections related to Indigenous Peoples, as well as the competencies of the Inter-American Court of Human Rights. In the final section, the paper analyses the potential for the IASHR to adjudge the violations against Chiquitano human rights.

**Keywords:** Inter-American System of Human Rights; Inter-American Court of Human Rights; Rights of Indigenous Peoples; Chiquitano.

## Resumo

*O artigo busca entender o conflito agrário nas terras tradicionais habitadas pelos Povos Indígenas Chiquitanos na fronteira Brasil-Bolívia. Busca determinar se há violações dos direitos humanos e se o caso preenche os requisitos necessários para ser analisado pelo Sistema Interamericano de Direitos Humanos. Para este fim, na primeira seção do artigo apresentamos um estudo etnográfico realizado entre os anos de 1970 a 2017, a fim de compreender o conflito agrário que ocorre em terras Chiquitano, em particular, nas comunidades Chiquitano: Fazendinha e Acorizal, Vila Nova Barbecho, Nossa Senhora Aparecida, e a Aldeia Urbana Aeroporto Hitchi Tuúrrs. Na segunda parte, há uma compilação das normas internacionais de proteção dos direitos humanos relacionados aos povos indígenas, bem como as competências da Corte Interamericana de Direitos Humanos. Na parte final, o artigo analisa o potencial do Sistema Interamericano de Direitos Humanos (SIDH) para julgar as violações aos direitos humanos do povo indígena Chiquitano.*

**Palavras-chave:** Sistema Interamericano de Direitos Humanos; Corte Interamericana de Direitos Humanos; direitos dos Povos Indígenas; Chiquitano.

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## 1. Introduction

Since the 20th century, there have been many efforts at the international and state level to recognize Indigenous Peoples' rights. Despite these efforts, Indigenous communities around the world are not protected by the state in the way they should be and still face challenges guaranteeing their human rights, such as the right to traditional lands and a healthy environment. This article analyses the case of the Chiquitano Indigenous People who inhabit lands on both sides of the Brazil-Bolivia border. Many Indigenous populations in Brazil and the Chiquitano People continue to defend their human right to self-determination and the usufruct of their lands.

The main objective of this paper is to understand the contention on lands that are traditionally inhabited by Chiquitano communities<sup>1</sup> and to examine the allegations of their human rights violations. Consequently, this paper analyses the potential for the Inter-American System of Human Rights (IASHR) to adjudge the violations against Chiquitano human rights.

The sources for this research are juridical-procedural data and available cases on the Inter-American Court of Human Rights (IACtHR) and Brazilian Federal Government website. Moreover, the paper explores grey literature from 2014-2016 in the Fundação Nacional do Índio (FUNAI) archives to discern the history of the Chiquitano communities. As a result of historic processes of depredations, discrimination, and silencing, only four of the 33 Chiquitano communities declare themselves as Indigenous, for this reason the study focus specifically on these communities: Fazendinha and Acorizal (located in Glebas Casalvasco, Tarumã, and Santa Rita), Vila Nova Barbecho, Nossa Senhora Aparecida (located in Gleba Tarumã), and the

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<sup>1</sup> The 1st Brazilian Meeting of Anthropology, held in Rio de Janeiro in 1953, approved a convention to standardize the spelling of Brazilian tribal names. In this study, therefore, the "tribal names will be capitalized, allowing the use of lowercase in their adjective use" and, still, "will not have Portuguese flexion of the number or gender, either in substantive use or in adjective use" (SCHADEN, 1976, p. XII).

Aldeia Urbana Aeroporto Hitchi Tuúrrs (composed of Chiquitano People from the Vila Bela da Santíssima Trindade municipality in Mato Grosso).

Other data collection sources include two field trips in May and July 2014 and virtual meetings in August 2017 to reveal information from different Indigenous leaders and community members. In 2014, Indigenous leaders from Vila Nova Barbecho were accompanied to the Cáceres Federal Police Station with the Federal Prosecutor of FUNAI to report the occurrence of a threat and to visit the Federal Public Ministry to better understand the socio-environmental conflict. Additionally, semi-structured interviews were conducted with Indigenous Peoples from the Chiquitano communities of Fazendinha, Vila Nova Barbecho, Nossa Senhora Aparecida, and Aldeia Urbana Aeroporto Hitchi Tuúrrs. These interviews revealed possible human rights violations since the 1970s, when the Institute of Colonization and Agrarian Reform (INCRA) intensified land distribution for farm installations.

The first section of the paper reviews the Chiquitano reality using ethnographic research and documents from judicial processes on agrarian conflicts in Chiquitano lands. The second section presents a compilation of international human rights standards applied to Indigenous issues and analyses the competencies and normative instruments of the IASHR. Thirdly, the paper examines judgements from the IACtHR and compares the similarities on human rights and international law violations against the Chiquitano People. This paper seeks to break away from the colonial model (QUIJANO, 2005), in order to understand and respect Indigenous culture, knowledge, and ways of being and living. The paper will provide a means for knowledge dissemination on the rights of Indigenous Peoples and will call academic and political attention, in particular to the concerns of the Chiquitano case.

## **2. Chiquitano Indigenous People: an ethnographic study and the role of the judiciary**

The French naturalist Alcides d'Orbigny first conceived the designation "Chiquitano" during his visit to Bolivia in 1831, as a generic attribution to the Indigenous Peoples who inhabited the region. The Chiquitano Indigenous People are composed of different ethnic groups, who were brought together during the Jesuit missions in 1691 to 1760.

Today, the Chiquitano inhabit lands on both sides of the Brazil-Bolivia border, in the headwaters of the Paraguay river to the Guaporé river in Brazil, and with the Guapay river on Bolivian soil. Data from 2008<sup>2</sup> indicates that in Mato Grosso, it is estimated that a population of 2400 Indigenous Peoples live in 33 communities in the municipalities of Cáceres, Porto Esperidião, Pontes and Lacerda, and Vila Bela da Santíssima Trindade, forming a continuous border between Mato Grosso and Bolivia (MOREIRA DA COSTA, 2006)<sup>3</sup>.

The Treaty of Madrid, signed by Portugal and Spain in 1750, stimulated the settlement of the Province of Mato Grosso with the Portuguese use of Indigenous labour. It was thought that the Chiquitano specialized in the production of nets, blankets, and food. A century later, the Land Law (1850)<sup>4</sup> and the Treaty of Ayacucho (1867)<sup>5</sup> intensified the Portuguese occupation of the Chiquitano lands, which were considered empty by farmers and military detachments (MOREIRA DA COSTA, 2006).

With the advent of the Constitution of the United States of Brazil in 1891, during the second constitution of Brazil and the first republican government system, the allegedly vacant lands were transferred to state

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<sup>2</sup> This is data referenced from Moreira da Costa (2006), based on a report prepared by the FUNAI Working Group. In order to attain more up-to-date knowledge, documentary research carried out by this same body in 2014, has revealed the existence of 137 families only in the municipality of Vila Bela da Santíssima Trindade, specifically in the Urban Village Airport Hitchi Tuúrns. Data collected in the same period indicate that Fazendinha and Acorizal have about 384 residents; 90 residents in Vila Nova Barbecho; and 130 in Santa Luzia.

<sup>3</sup> The geographer Moreira da Costa (2006) reports the existence of 31 communities. According to a virtual interview held with a Chiquitano member, in 2017 there was an internal division that formed the communities Notchopro Matupama and Nautukich. Therefore, revealing a total of thirty-three communities. Notchopro Matupama came from the Central community, and Nautukich from Acorizal. Moreira da Costa (2006) describes the nuclei of Chiquitano families are considered communities, even if in some there is a significant presence of non-Indigenous people. In an interview with the geographer and some Indigenous Chiquitano, it was reported that some residents do not declare themselves Indigenous, as this implies greater difficulties in finding jobs and prejudice.

<sup>4</sup> Dom Pedro II promulgated the first Brazilian initiative to organize private property, which until then had no document that regulated land ownership. In the same year, the Eusébo de Queirós Law was approved, which foresaw the end of the slave trade and signalled the abolition of slavery in Brazil. Due to the concerns of farmers, landowners, and politicians on Black people becoming landowners, the same law established that land could only be acquired by purchase and sale or donation from the state. Therefore, obtaining land by adverse possession was no longer allowed. Those who had already occupied some lot of land received the title of owner, but provided they lived and had productivity in the locality.

<sup>5</sup> Celebrated in La Paz, Bolivia, also known as the Treaty of Friendship or the Muñoz-Netto Treaty. It declared peace between the Brazilian Empire and Bolivia, as well as established the legal possibility of navigation and traffic. Thus, the Bolivian borders were pushed back in favour of the Brazilian Empire. Bolivian vessels gained access to Brazilian rivers. Rubber extractivism in the region became the new life project of northeasterners who sought to escape from drought, which resulted in a greater settlement of the region. In 1898, the Boundary Demarcation Commission demonstrated that part of Acre belonged to Bolivia. It was revealed that this territorial division between the nation-states hid the true owners of the lands, the Indigenous People who lived there.

government responsibility. The Indigenous Peoples did not have their traditional territories recognized and their dispatched lands generated many agrarian and socio-environmental conflicts.

In the Chaco War between Bolivia and Paraguay in the early 20th century, Chiquitano Indigenous People fought in the Bolivian army. This was a very difficult time for Indigenous survival, as the Bolivian army forced Indigenous men and boys to fight in the war. Many Chiquitano families fled from Bolivia to Brazil, in order to save their children from the war that largely decimated their population and dispersed many communities in Brazil.

Since 1970, the INCRA has carried out land regularization in the traditional lands belonging to the Chiquitano Indigenous Peoples. This allowed large landholdings expansions, which has contributed to the increasing difficulties of Chiquitano survival (MOREIRA DA COSTA, 2006; SILVA, 2004).<sup>6</sup> Thus, Chiquitano communities had their land parcelled into tiny plots that were later acquired by farmers. Some Indigenous Peoples under coercion eventually abandoned their place of origin. As a result, they had nowhere to go and occupied roads and peripheries of nearby municipalities. The Chiquitano People who resisted on their lands were surrounded and enclosed by farmers and confined in small communal areas. Since then, the natural resources necessary for their physical and cultural survival have been transformed into pastures. The farmers would assign work for the Chiquitano People in a manner analogous to slavery.<sup>7</sup>

In the late 1990s, an environmental license for the construction of the Gasoduto Bolivia-Mato Grosso called for the demarcation of Chiquitano lands along the Brazilian border. Faced with this obstacle, the Brazilian State granted greater resources to the FUNAI. This was done in order to promote the identification and delimitation of the Portal do Encantado Indigenous Land, as a presupposition for the construction of a road that would pass

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<sup>6</sup> Documentary research carried out at FUNAI in 2014 indicated that on 08.01.2013, the Public Prosecutor's Office established, through Ordinance nº 2, Public Civil Inquiry to investigate the involvement of INCRA in the process of plotting for the traditional Chiquitano lands.

<sup>7</sup> Field research conducted with Chiquitano members reported the way in which they performed work for farmers who, under the Federal Constitution of 1988 and the infraconstitutional laws, would assign work analogous to slavery. The conditions of the food and the accommodation were improper. In addition, one of the farmers who came to live in the region destroyed the community's swidden. This forced the community members to buy food produced on their farms and to work at nearby grocery stores. At the end of the month, they were in debt and had no money. After the arrival of FUNAI at the end of the 1990s, this situation ceased. It is not certain how the work was undertaken by those who did not declare themselves Indigenous because they preferred to remain silent rather than lose their jobs.

through Indigenous territory.<sup>8</sup> As a result, part of the area was recognized as belonging to Acorizal and Fazendinha communities. However, the ordinance declared was suspended by a court order.<sup>9</sup>

Initial research conducted by INCRA on the historical processes of colonizing Chiquitano lands indicated the transgression of the right to life. A field survey conducted in 2014, through a questionnaire, reported allegations on working conditions analogous to slavery since the occupation of Indigenous lands. This, as well as the history of prejudice, environmental degradation, and restrictions on physical-cultural reproduction, resulted in strong ramifications in the livelihoods of the Chiquitano People. The rights of physical and mental integrity were also violated, according to reports of Indigenous Peoples. The mistreatment carried out by managers subjected Indigenous Peoples to extended periods of work in degrading conditions and they were forced to perform certain tasks while ill. After the arrival of the FUNAI in the late nineties, the situation diminished due to greater care provided to Indigenous Peoples. However, some farmers began to deny work to those who declared themselves as Indigenous Peoples. The history of prejudice and silencing has caused many Chiquitano communities to deny their Indigenous identity, hindering the progress of FUNAI.

The Vila Nova Barbecho community located in Gleba Tarumã has endured a long period without water. Although the São Pedro stream passes through the community, its waters first bathe the lands of the neighbouring farm. The stream supplies the cattle, leaving it unfit for human use. In June 2015, the Juizado Especial Volante Ambiental (Juvam) fined farm owners for pollution and damage to the stream.<sup>10</sup> In 2006, the Public Prosecutor's Office

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<sup>8</sup> The FUNAI is responsible for guiding and executing the demarcation of lands under the terms of the Directorate of Territorial Protection (DPT), according to the provisions of Law nº 6.001 of 19.12.1973 (Statute of the Indian), Decree nº 1.775 of 08.01.1996, and Decree nº 7.778 of 27.07.2012.

<sup>9</sup> The administrative demarcation process under the jurisdiction of the FUNAI was published on 31.12.2010 in the *Diário Oficial da União* (DOU; Official Gazette of the Union) of the Ministry of Justice, Ordinance 2219/2010. However, it has been suspended since 2011. This is because it was granted early protection in Case nº 0000151-76.2011.4.01.3601, which was processed in the 1st Court of the Federal Court in Cáceres and distributed in 13.01.2011. The requesting party was owner of the farm in the same area. After the declaration of the recognition of the Indigenous Land (act of the Minister of Justice) and its homologation (act of the President of the Republic), it is no longer possible to take the case for judicial review. According to the Civil Code, the deadline for contesting an ordinance that approves an Indigenous land and the declaration of Indigenous possession is 15 years and starts from the publication of the ordinance. In the case of an injunction made by the State, it shall be 120 days in accordance with the Internal Rules of the Supreme Court under Article 110 and Article 247 (see Ordinary Civil Action Agr 365, MT, Aldir Passarinho's report, 1987).

<sup>10</sup> As reported on the official website of the Court of Justice of Mato Grosso: <http://www.tjmt.jus.br/noticias/40117#.WYJA5ITyviU> Last access: 02.08.2019.



filed a lawsuit against the farm owners for their constant threats to the Indigenous Peoples.<sup>11</sup> Juvam decided that even if the land was not definitively demarcated by FUNAI, a semi-artesian well would be built. The judicial decision also stipulated the delimitation of an exclusive area of 25 hectares for the community and common access to the farm for the collection of raw materials and subsistence.

The Indigenous Peoples avoided the common farm access because of threats suffered in trying to hunt and fish and to collect raw materials. Furthermore, the farm continued to make threats during the construction attempt and the company responsible refused to build the well. Moreover, the raw materials disappeared leaving the Indigenous Peoples without hope to the possibility of having drinking water in the community. Although an established well is a universal good necessary for survival and dignity, the execution phase has not promoted measures for its effective construction. This situation demonstrates the drawn-out process and the position adhered to by most Judiciary Power judges.

In order to supply the shortage of drinking water, a religious mission built a semi-artesian well in the 1990s. However, its supply is still insufficient for the 18 families.<sup>12</sup> The solar powered well provides little water volume and does not work on cloudy days. In a virtual interview held in early August 2017, an Indigenous member of Vila Nova Barbecho mentioned that the farm appears to have a new owner who deforests and deploys pasture. The Indigenous Peoples continue to avoid the use of stream water due to the mistrust of pesticides in the plantation around the stream. In Gleba Casalvasco, several communities are resisting along the Barbados River, including that of Nossa Senhora Aparecida. This community is the only one in the region that identifies itself as Indigenous, making it the target of constant threats.<sup>13</sup> Although the FUNAI has initiated a study for the identification and demarcation of Indigenous land in Gleba Casalvasco<sup>14</sup>, it

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<sup>11</sup> Public Civil Action nº 0001482-69.2006.4.01.3601 proceedings in the Federal Court of the judicial subsection of Cáceres.

<sup>12</sup> Data found in one of FUNAI's petitions in the process.

<sup>13</sup> Complaints sent to the Federal Public Ministry culminated in the establishment of the Civil Public Inquiry, through Ordinance 033/2012, in order to investigate the conflict between Our Lady of Aparecida and the São João do Guaporé Farm.

<sup>14</sup> Study introduced by Ordinance 686/2003 and published in DOU on 16.07.2003.

could not be concluded due to the history of prejudice and silencing associated with personal Indigenous identification.<sup>15</sup>

Many Chiquitano families depend on hand labour sales and farmers, who began to refuse work to those who identify themselves as Indigenous Peoples. Many are afraid of not having the means to sustain themselves or for a place of residence. Due to the region's prejudice towards Indigenous Peoples, some feel ashamed or prefer to remain silent. In addition to hindering the work of FUNAI, the situation has generated internal conflicts that have lasted for more than a decade.

The Chiquitano leader, Antônio Leite, led 137 families living mostly in the Bairro Aeroporto. The Hitchi Tuúrns Airport Urban Village, in the traditional language means "the protective spirit of the waters". This community demanded for the return of its traditional lands, mostly located in Gleba Casalvasco in the region of Baía Grande. In a letter to the Federal Public Ministry, Antônio Leite reported the expulsion of their traditional lands and violence to Indigenous families by local authorities and farmers.

The agrarian conflicts perpetuated in the communities of Fazendinha, Acorizal, Vila Nova Barbecho, Nossa Senhora Aparecida, and Aldeia Urbana Aeroporto Hitchi Tuúrns between 1970 and 2017, demonstrate the vulnerability of the Chiquitano Indigenous People.

Before going into the analysis on the potential resolution of the issue by the IASHR, there is a need for an overview of the international normative instruments for protecting the rights of Indigenous Peoples. Moreover, the next section provides a brief summary of the competencies of the IASHR, who on some occasions have played an important international role for the safeguarding of Indigenous Peoples' rights.

### **3. Normative instruments and international bodies: limits and solutions for safeguarding the human rights of Indigenous Peoples**

#### **3.1 Normative instruments**

The International Labour Organization (ILO) was the pioneer in establishing legal norms concerning Indigenous Peoples at the international level. The ILO has adopted normative instruments to protect the rights of

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<sup>15</sup> The land demarcation procedure consists of the following phases: identification and delimitation phase, physical demarcation phase, homologation phase, and registration phase of Indigenous lands. In the first phase, the administrative procedure did not meet the self-affirmation of ethnicity requirement.

Indigenous Peoples. Convention nº 50, adopted in 1936 and entered into force in 1939, was responsible for regulating the hiring of Indigenous workers and defining measures for states to promote the workers selection process. Other normative instruments that have been adopted include: Convention nº 64 of 1939, which deals with the employment contracts of Indigenous workers; Convention nº 65 of 1939, attends to criminal penalties for violations of employment contracts by Indigenous workers; Convention 86 of 1947, controls the maximum duration of the contract of employment of Indigenous workers; and Convention 104, adopted in 1955 and entered into force in 1958, concerns the Abolition of Criminal Sanctions of Indigenous Workers and recommends States to suspend any criminal penalties for breach of contract by Indigenous workers (FIGUEROA, 2009).

The American Convention on Human Rights (ACHR), also known as the San José Pact of Costa Rica, was established in 1969 and entered into force in 1978. It does not specifically deal with the rights of Indigenous Peoples, nor does it explicitly refer to them. However, the rights contained aims to protect all people without any distinction. It is complemented by the 1966 International Covenant on Civil and Political Rights (Covenant on Civil Rights) and the International Covenant on Economic, Social and Cultural Rights (Covenant on Social Rights), although both only entered into force in 1976 after the rectification of 35 countries.

These conventions deemed that Indigenous Peoples should be included in the nation's workforce. Nonetheless, the conventions influenced other international and national regulatory instruments. In Brazil, the creation of the Indian Protection Service (IPS) had strong influences on the international convention to include Indigenous Peoples in the nation's workforce. There have been several attempts to take this integrationist view and the modern notion of progress to Indigenous lands. In Brazil, Marechal Cândido Rondon was responsible for contacting several isolated ethnic groups and for establishing telegraph posts on the Amazon border (RONDON, 1947).

Due to many cases of discrimination and exploitation of Indigenous Peoples in labour relations, in 1957 the ILO edited and approved Convention nº 107. Although it aimed at greater protection of Indigenous Peoples and tribal and semi-tribal populations, the convention still contained the integrationist perspectives of work. The convention's approach on including Indigenous People into the nation's workforce consequently disrespected

Indigenous ways of living and allowed room for colonial continuity of contact and exploitation. Except now, with international legal support.

Although the United Nations (UN) Subcommittee on the Prevention of Discrimination and Protection of Minorities already existed (current UN Subcommittee on Promotion and Protection of Human Rights), after Convention 107 was approved it began to receive complaints related to human rights violations of Indigenous Peoples. In 1971, the UN Economic and Social Council approved internal regulations that authorized the realization, by the Subcommittee, of a study on the issue of discrimination against Indigenous Peoples. The results of the study showed that existing international human rights standards did not adequately address the specificity of Indigenous issues. It also pointed to the need to revise the text of ILO Convention 107 and to draw up a UN Convention that would more suitably address the issue.

Despite the objectives of Convention n°107 to protect Indigenous Peoples, tribes, and semi-tribes, a deeply ethnocentric feature was still present and continued to perpetuate the colonial approach to the relationship with Indigenous Peoples. This can be illustrated through the understanding of Indigenous Peoples as those "whose social and economic conditions correspond to a less advanced stage than that attained by other sectors of the national community" (Article 1, Clause 1, Amendment "a" of Convention No 107). As a result of this prejudice, states developed public policies to be applied to Indigenous Peoples contrary to cosmology, mother tongue, and their customs. Kayser (2010, p. 333) explains that "the Convention assumes that, in the case of the Indigenous, it is a part of the lower national communion, of little value, in a transitional stage of evolution, which must be overcome as soon as possible for the well-being of the Indigenous." Along the same line, Marques (2010) points out the lack of recognition of Indigenous Peoples as populations that need special attention, the recognition of property rights and their lands, and the need for the state to respect the customary right of Indigenous Peoples in the official law.

In 1989, the ILO edited the Convention n° 169 to abolish Convention n°107 (ANTUNES, 2019). The major contributions brought by Convention 169 were the adoption of the term "Indigenous Peoples"; the right to property; and the need for prior consultation by the state on matters concerning its interests. Therefore, it can be said that Convention 169 is "the first

international instrument to treat decently the collective rights of Indigenous Peoples, establishing minimum standards to be followed by States and distancing the principle of assimilation and acculturation with regard to these peoples." (ARAÚJO, 2006, p. 59).

The analysis of these international normative instruments demonstrates its promise as fruits of society and of a more progressive period. It should be noted that the law has its limitations and to understand the imperfections in its ability to solve social problems. The conventions and regulations need to have regular amendments, in order to accompany and adapt to societies. The law must take into consideration its capacity to legalize oppressions, in order to avoid them and seek to protect vulnerable populations. History, at national and international level, attests the law to its legitimizing role in colonial and human rights-violating practices. At the same time, it demonstrates it as an important instrument to ensure these rights.

### **3.2 The Inter-American System of Human Rights**

The Organization of American States (OAS), founded in 1948, created its own human rights protection system for the American Continent, the Inter-American System of Human Rights (IASHR). Composed of two divisions, the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights (IACtHR) has two main legal bases: the OAS Charter (1948) and the American Convention on Human Rights (ACHR) (1978).

The Commission is a political body based in Washington, United States of America. Although it does not admit denunciation communications against a State Party that has not recognised it as competent to interfere in state affairs, it nevertheless represents all State Parties that are members of the OAS. The IACHR aims to promote the observance and defence of human integrity through recommendations to governments and responding to information requests on measures adopted in the field of human rights (LEGALE; VAL, 2017).

The Commission is also responsible for: investigating human rights violations for later referral to the Inter-American Court of Human Rights Protection; encouraging compliance with the San José Pact of Costa Rica; making recommendations; preparing studies and reports; requesting information from State Parties; and acting on the receipt and processing of

individual petitions and communications. It is entitled to apply to the Commission: victims, any person or group of persons, or non-governmental entity legally recognised in one or more Member States of the Organization.

Any State Party, at the time of ratification of the ACHR or thereafter, may or may not accede to IASHR . It is, therefore, an option to submit or not submit to the jurisdiction of the IACtHR, which is a court of jurisdiction. Article 61-1 of the ACHR provides the possibility of submitting a case to the IACtHR's analysis, only by the IACHR and the Member States. In other words, it does not allow the individual direct access to the Court. However, after the case submission stage, the innovations brought by the III and IV Regulations of the IACtHR enables the individual to participate in the process. This allows representatives or family members of the victims to present, autonomously, their own claims and evidence during the discussion stage on the reparations due.

The Inter-American System presents itself as a potential platform to assess human rights violations against Indigenous Peoples. There have been allegations on human rights violations against Indigenous Peoples judged by a court. The following section will investigate the possibility of the Inter-American System in examining human rights violations against the Chiquitano People.

#### **4. Human rights violations against the Chiquitano Indigenous People and jurisprudence of the Inter-American System of Human Rights**

Although the Brazilian Federal Constitution recognizes the right to lands traditionally inhabited by Indigenous Peoples, the judicial power<sup>28</sup> continues to use a colonial approach on the interpretation of the rights of Indigenous Peoples and their land. This is evident in the right to physical-cultural reproduction and the right to dignity and healthy environment. The judicial power delays and establishes “marco temporal” (temporal landmark) time frames in the (non) granting of rights to Indigenous Peoples (ANTUNES 2020). Some federal court judges (responsible for judging agrarian conflicts of Indigenous lands) and the Supreme Court of Brazil adopt positions that perpetuate a colonial relationship with Indigenous landowners. This imparts conflicting interpretations to Indigenous rights provided for in the Brazilian federal constitution of 1988 (PAROLA; NOGUEIRA; BRITTO, 2019).

The imposition on the “marco temporal”<sup>9</sup> starting date in October 1988, the same date of the promulgation of the Brazilian Federal

Constitution, grants the traditional right to land to Indigenous Peoples and perpetuates the state's colonial relationship with Indigenous Peoples. The slow demarcation process in recognizing the traditional right to Indigenous land also demonstrates a strategy of extermination and weakening of Indigenous culture. The Indigenous way of living depends on the possession of their traditional lands. The Earth is considered their mother, their food, their identity, and their way of life. However, the State continues to deem Indigenous Peoples as unproductive individuals who hinder the progress and economy of the country. This relays the same approach as the International Convention 107 and the invasion of Brazil on April 22, 1500, still celebrated by the non-Indigenous as "discovery".

The inhumane living circumstances inflicted on the Chiquitano People and the fact that most of their lands have not been demarcated, points out that these Indigenous Peoples have not broken free from inequities. The Brazilian state is responsible for perpetuating the colonial relationship and the extermination of Indigenous Peoples. The unwillingness of the judiciary to recognize the human rights of Indigenous Peoples has been one of their tools to annihilate this population. The application of international legislation and the Inter-American System case-law can be deemed as ineffective decision-making of the Brazilian state in resolving the Chiquitano agrarian conflict. This provides a plausible justification to bring the Chiquitano case on human rights violations to the Inter-American Court.

The following section analyses human rights violations against the Chiquitano People and similar cases that have been judged by the IACtHR.

#### **4.1. The case of the Chiquitano Indigenous People**

Some Indigenous Peoples are displaced after the parcelling of their lands. From the 1970s onwards, it became unattainable to live according to their traditional land uses and customs. The Indigenous Peoples were restricted in accessing raw materials for making artefacts, which were sometimes destroyed because they were inside farms used for pastures, agriculture, and livestock. The violation of the right to life is evident as it altered and prevented the physical-social reproduction of Chiquitano ways of acting, doing, and living. The lack of traditional land demarcation perpetuated microaggressions and the poor moral and physical working conditions analogous to slavery. In order to fully exercise human rights, the

enjoyment of the basic right to life, including the right to live is necessary (TRINDADE, 1993).

According to Articles 21 and 25 of the ACHR, the lack of land demarcation destined for the Chiquitano violates the right to private property and judicial protection. This convention does not conceptualize property but establishes that it is the use and enjoyment of its goods. The Inter-American jurisprudence understands that the ownership of Indigenous lands is linked to the exercise of rights corresponding to life, freedom, integrity, honour, safety, health, movement, residence, dignity, and self-determination (TEIXEIRA, 2011). The Indigenous cosmology upholds the need for a healthy environment as its relationship with Indigenous Peoples is maintained through nature, rivers, forests, animals, and mountains. Article 13.1 of the ILO Convention 169, understands ownership as follows: "in applying the provisions of this Part of the Convention governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship". Article 14.1 recognizes that people have the rights of property and possession over the lands that they traditionally inhabit and "measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect".

The American Convention made the effort to resolve the concept of property and established in Article 21.1 that "every person has the right to the use and enjoyment of his property". As a result, the rule would ensure that people could not be deprived of their property. Articles 4, 5, 11, 12, and 22 of the ACHR further demonstrate that the right to property related to environmental issues reflects the exercise of the right to life, personal integrity, honour, dignity, freedom of religion, movement, and residence. This understanding serves as a reinforcement not only to civil rights, but also demonstrates itself to be a tool for the protection of vulnerable groups with regard to their economic, social, and cultural rights. Thus, the demands and the claims brought to the system indicate the significance of its relations with nature and show a new interpretation of human rights.



The Chiquitano Indigenous communities are deprived of their lands and consequently, of their natural resources. The Declaration of the UN Assembly on the Rights of Indigenous Peoples (2007) recognizes that the access of peoples to natural resources is a way of maintaining their political, economic, social, cultural, and spiritual tradition structures. It also reinforces the need for a state obligation to establish mechanisms aimed at the prevention and compensation of:

- (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
- (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
- (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;
- (d) Any form of forced assimilation or integration;
- (e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them (Article 8.2).

The Chiquitano Nossa Senhora Aparecida community is enclosed and constantly threatened by its lack of traditional territory demarcation. The Brazilian State adopted a Ministerial Ordinance nº 2219/2010, although suspended in 2011, that places the Acorizal and Fazendinha communities in a vulnerable situation. The Urban Village Airport Hitchi Tuúrrs, composed of Chiquitano who have been expelled from their lands, hampers the continuity of their traditional fishing practices, making artefacts, and rituals. The history of prejudice and silencing has undermined the Indigenous identity of these Peoples. Indigenous communities are at risk of extermination due to state actions and omissions.

According to Article 5.1 of the ACHR, the right to life is related to the integrity of the victim, not limited to cases of physical, psychological, and moral aggression. The Organization of American State Annual Report states (1988, p. 322): “The essence of legal protection to which a government is obliged is to guarantee the social and economic aspirations of its people, giving priority to the needs of health, food and education. Prioritizing survival rights and basic needs is a natural consequence of the right to personal security”.

Articles 11, 17.1, and 19 of the American Convention ensure the protection of family and child life. Article 19 recognizes that the State, the

family, and society must use "protective measures" for the better welfare of children and women.<sup>16</sup> According to the report of the UN Population Fund (2001), it is common to use pesticides in the water, land, and air of rural areas that practice agricultural activities, which can cause soil erosion and water scarcity. Research has demonstrated its effects on women's health. Pregnant women in contact with these toxic chemicals has resulted in kidney disorders, maternal milk contamination, and an increase in cases of natural abortion, stillbirths, and perinatal deaths.<sup>17</sup>

The Article 1.1 of American Convention imposes on State Parties the duty to guarantee the rights provided "to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition". Article 24, of the same Convention, complements this understanding of equality before the law to all without discrimination and was clarified by the Consultative Opinion OC 4/84. The notion of equality is incompatible with "any situation which, because it considers a group to be superior, leads it to treat it with privilege; or which, on the other hand, it considers it to be equal-the lower, treat it with hostility or in any way discriminate against the enjoyment of rights that are recognized to those who do not consider themselves incurring in such a situation of inferiority" (p. 55, 1984).<sup>18</sup>

Article 11 of the Protocol of San Salvador and Article 14 of the Inter-American Democratic Charter illustrate the interconnection between environmental issues and the guarantee of civil, political, economic, social

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<sup>16</sup> Child protection measures were defined for the first time by the IACtHR, in the judgement about *Niños de La calle*, Villagrán Morales and others versus Guatemala (2011). The court established the following parameters: a) to prevent children from being thrown into poverty by guaranteeing them decent conditions; b) to provide personal assistance to children deprived of their environment, families, victims of abandonment or exploitation, providing conditions for social reintegration; c) observing the provisions of the Convention on the Rights of the Child.

In environmental matters, cases highlight the need to give special protection to children. Examples are: a) the case of the Community n'adjuka Marron, of Moiwana, versus Suriname (2005); b) the case *Yakye Axa versus Paraguay* (2005); c) the case *Sawhoyamaya versus Paraguay* (2006). According to these judges, the distancing of *Enxet-leguas* from their traditional lands results in damage to the health of the Indigenous community. The Indigenous members, mainly the children, were victim to the poor conditions for fishing, hunting and gathering of fruits. This resulted in child malnutrition, decreased student assessment scores, deteriorated growth development and delay in intellectual development, and symptoms of tropical malignant anaemia.

<sup>17</sup> The situation violates the rights of women, provided in the Inter-American Convention to Prevent, Punish and Eradicate Violence against Women (1994). Belém do Pará Convention recognizes it, in Article 9, as a condition of vulnerability for pregnant women, people with disabilities, minors, and older people.

<sup>18</sup> Consultative Opinion OC 4/84, p. 55, 1984.

and cultural rights.<sup>19</sup> As Alan Boyle explains (2010), environmental protection in the IASHR stems from the analysis of three concepts: 1) the relationship of environmental law with issues of civil and political rights violations, mainly with regard to the right to information, political participation, and the development of protective legal measures; 2) the relation of access to a healthy, balanced and decent environment to issues involving cultural, social and economic law, such as rights to development and access to health; and 3) the concept of environmental quality as a collective right of solidarity that provides a well-directed need for management and protection by the collective than by a group of individuals.

The UNDRIP recognizes that access to natural resources implies the maintenance of Indigenous political, economic, social, cultural, and spiritual structures. The action or omission of the State in cases of deforestation and ecosystems destruction also violates some of these rights, according to

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<sup>19</sup> In the IASHR, the principle of equality and the prohibition of discrimination are used as grounds for judgments concerning the construction of large dams and hydroelectric dams, which affect the lives of local communities and represent benefits to the country's economy. The following are the cases: 1) Injunctive Order of the Ngobe Indigenous Communities and others (MC 56-08, 17.06.2009), in which the IACHR found the violation of rights, particularly against communities affected by the Chan-75 hydroelectric project; 2) Community of Rio Negro, the Mayan Indigenous People and its members *versus* Guatemala (Report 13/08, 05.03.2008), in which the construction of the Chixoy dam resulted in the massacre of the local Indigenous community; 3) Injunctive Measure of the Indigenous community of Xingu *versus* Brazil (petitioned in 2010), in which the suspension of environmental licensing for the construction of the Belo Monte hydroelectric plant on the Xingu River, Pará was requested. The Asociación Interamericana para La Defensa Del Ambiente (AINDA) understood that the construction entailed several damages such as: a) irreversible damages to the right of access to the healthy environment; b) forced removal of communities without due planning and compensation; c) lack of environmental impact assessment; c) lack of prior consultation and public participation; d) violation of Indigenous property rights; e) lack of access to information and justice; and f) curtailment of communities' right to protest through hostilities, threats and murders; 4) In the trial of the Yanomami *versus* Brazil case, the IACHR found that the construction of a road through the territory of the ethnic group violated the right to life, freedom, personal security, and the preservation of health and well-being. This was recognized by the American Declaration of Human Rights and Duties (Resolution 12/85, case 7.615, 05.03.1985, contained in the Annual Report of the IACHR 1984-85, OAS/Ser. L/V/II.66, doc. 10 ver. 1, 01.10.1985, 24, 31). It was found that Article 11 of the San Salvador Protocol, was systematically used to protect the rights of Indigenous communities that were subsequently analysed by the system; 5) In the case of the Awás Tingni Mayagna (Sumo) Indigenous Community *versus* Nicaragua, the IACHR found that the State of Nicaragua violated the right to private property and judicial protection by not demarcating the Indigenous lands, as referred to in Articles 21 and 25 of the American Convention (Judgment of 31 August 2001. Serie C, nº 79); 6) In the case of Yakye Axa *versus* Paraguay (Sentence of 17.05.2005. Serie C, nº 125); 7) Sawhoyamaya *versus* Paraguay Indigenous community (Sentence of 29.03.2006. Serie C, nº 146); 8) Quilombola people Saramaka *versus* Suriname (Sentence of 28.11.2007. Serie C, nº 172). In the latter cases, Corte took into account issues related to the environment associated with civil and social rights; and 9) Case Claude Reyes and other *versus* Chile: The Court obliged the Chilean State to provide clarification to the population regarding a reforestation project and highlighted that the mechanisms and principles of the ACHR should be used by anyone, whether or not it belongs to an Indigenous community or group (Sentence of 19 September 2006. Serie C, nº 151) (TEIXEIRA, 2011).

Article 5.1 of the ACHR. The protection of the right to healthy environment alone is impractical, as systems of protection should also include civil, political, social, cultural, and economic rights. Thus, the only way to protect the right to healthy environment is to associate it with individual and/or collective human rights (TEIXERIA, 2011). This phenomenon is called "greening" of the system (TEIXEIRA, 2011).

The right to a healthy environment is enforced by the system through the "reflex way" or "ricochet" (GOMES, 2010, p. 167). This is only because its observance and effectiveness are recognized and required when necessarily related to human rights violations of a civil, political, economic, social and/or cultural nature. According to Cançado Trindade (1993), this is an effective strategy to protect groups and communities in a state of vulnerability due to environmental degradation. Resolution 1819 of the Organization of American State General Assembly of 05.06.2001 reinforced this understanding by "emphasizing the importance of studying the link that may exist between the environment and human rights". According to this resolution, this means that not only Article 11 of the San Salvador Protocol, but other devices can also be invoked as "interpretative support and (...) improvement" of the jurisprudence in the IASHR.

The land is the basis of production and support of ethnic identity (OLIVEIRA, 1998), being a premise to the enjoyment of other rights. In this sense, the article deals not only with the human rights violations against the Chiquitano People and agrarian conflict, but the need for the ethnic-cultural existence of Indigenous Peoples. There should be no influence from the coloniality of power<sup>20</sup> that occurs at the local, regional, and global levels.

## 5. Conclusion

The paper research on the Chiquitano Indigenous People has revealed their present-day conditions and livelihoods. International norms show limitations in understanding Indigenous realities, which emphasises the need for interpretations by the IACtHR and new international norms, even if they are restricted to recognition by individual nation states.

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<sup>20</sup> Indigenous and non-Indigenous Peoples find themselves in a relationship of "coloniality of power" (QUIJANO, 2005), which since ancient times maintains an alleged superiority or inferiority. This relationship is based on dichotomies such as "scientific culture/literary culture, scientific knowledge/traditional knowledge, man/woman, culture/nature" (SANTOS, 2000, p. 739).

These limitations have repercussions at the national level, as well as in the work of the IASHR. The current IACtHR system violates the ACHR (Pact of San José) of 1969, which does not contain in its text any considerations on economic, social, cultural or environmental rights. So, what can be done on this lack of legal provisions?

The lack of demarcation on Chiquitano lands and the consequent social-environmental conflicts point out, according to the American Declaration of Human Rights and Duties, the infringement of the following human rights: Article I (right to life, freedom, security and integrity); Article II (right of equality before the law); Article III (right of religious and ritual freedom); Article XI (rights to preserve health and well-being); Article XII (right to education); Article XVII (right of recognition of juridical personality and civil rights); and Article XXIII (guarantee of property).

Article 46.1, a) of the American Convention demands that before a case is sent to be analysed in IACtHR, it is necessary to exhaust internal juridical resources. However, given that it is a case that involves an environmental issue, the loss can be irreversible to the victims, thus permitting an exception to the rule.

The jurisprudence of the Inter-American System shows the Court is competent to judge a case involving civil, political, economic, social, cultural rights. Moreover, the Court is able to judge a case that involves environmental rights that are directly related to other human rights. This necessary link means that environmental rights are only supported by the reflex way, in other words, by an indirect form. Thus, it is certainly feasible for the IASHR to conduct an analysis on the case of the Chiquitano Indigenous People and to have it judged in favour of their survival.

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