HUMAN RIGHTS IN THE BRAZILIAN AMAZONIC REGION: VISIONS FROM THE INTER-AMERICAN HUMAN RIGHTS SYSTEM


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Abstract: This article, that aims showing He developments of a research in development, is about decisions of the Inter-American system on human rights over human rights violations on states located in the Brazilian northern region: Amapá, Pará, Amazonas, Rondônia, Roraima, Tocantins and Acre. It is important to mention that the objective of the research is not to analyze the totality of human rights violations on those states, but only to study how the organs that compose this system sees the region. Bearing it in mind, it was made a survey of all the decisions of the Inter-American Commission and the Inter-American Court on Human Rights, available on their respective websites, and, after it, a filtering of the decisions that contain human right violation on those seven states. Then, we will look forward answering the following questions: What is the percentage of human rights violations on those states inside the universe of violations in Brazil? And the percentage of cases on each of those states, when compare with the Brazilian total, and the Brazilian Northern region total? What are the main kinds of human rights violations perpetrated on that region that are notified to the Inter-American human rights system?

Keywords: Human Rights; Inter-American system; Brazilian Amazon region.
1- Introduction

After the Second World War, human rights emerged as an International Relations theme. The United Nations Charter, which arose from the traumatic experience of that war, was the first international treaty to recognize universal human rights, but without making clear what those rights were. This task was accomplished in 1948, when the UN General Assembly approved the Universal Declaration of Human Rights, a non-binding document. Although it was not mandatory, the political impact of the Declaration was important, because of its consequences. One of those consequences was the approval, in 1966, of the two main human rights treaties of the United Nations System (which are binding documents): The International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights. Those two treaties, together with the Universal Declaration of Human Rights, form the “International Charter of Human Rights”, which is the core of the human rights global protection system (FORSYTHE, 2000, p. 36-41).

Still as a reflex of the Universal Declaration of Human Rights, it started a phenomena of regionalization of human rights norms, emerging three regional human rights system: the European system, institutionalized by the European Convention of Human Rights, of 1950; the Inter-American, institutionalized by the American Convention of Human Rights (also known as the San Jose of Costa Rica Pact), of 1969, which is connected to the Organization of American States (OAS); and the African system, created by the African Charter on Human and People's rights, of 1981. Although the treaties that create those human rights regional systems reflect the peculiarities of each one of those continents, references to the Universal Declaration of Human Rights are done on the preambles of all those treaties (PIOVESAN, 2012, p. 327-321; TRINDADE, 2003, p. 27-28).

The purpose of this article is to analyze the decisions of the Inter-American human rights system on the Brazilian Amazon. It is not a goal of this research examining the totality of human rights violations in the States of the Northern region of Brazil (Amapá, Pará, Amazonas, Rondônia, Roraima, Tocantins and Acre), but only to study how
the organs that make up this system see the region. Thus, a survey was made of all decisions of the Inter-American Commission on human rights (IACHR) and the Inter-American Court of human rights (Inter-American Court) which are available on their respective websites, until 2012, and, subsequently, a filtering decisions containing human rights violations in these seven States. From there, I sought to answer the following questions: what is the percentage of cases of human rights violations in the States of the North region within the universe of cases of violations in Brazil within the Inter-American system? What is the percentage of cases relating to each of those States, both in the universe of Brazil, and in the northern region? What are the main types of human rights violations that have occurred in this region which came to the attention of the Inter-American human rights system?

This research is still in the development stage. Here, I analyzed only the decisions of the IACHR relating to the merit, and friendly settlements adopted within the same organ of the Inter-American system of human rights. I still ought to analyze the precautionary measures taken by the IACHR, the archived cases and the admissibility and inadmissibility decisions on that organ, as well as the decisions of the Inter-American Court.

The analytical path adopted in this article was as follows: in the first, in order to situate the reader, I wrote about the Inter-American human rights System; secondly, I analyze about Brazil's relation with the Inter-American system, focusing, specifically, on the insertion of Brazil in that system; and, finally, the visions of the Inter-American Commission about human rights on the Brazilian Amazon.

Therefore, as this research is still on development, this paper has some limitations, which I aim to remedy as this research continues: it lacks a theoretical reference, for example. Thus, it is to be emphasized that all the conclusions presented here are partial.

2- The Inter-American Human Rights System

Although much of the specialized bibliography on International Human Rights Law identify a single Inter-American human rights system (DONNELLY, 1989; PIOVESAN, 2012; TRAVIESO, 2005; TRINDADE, 2003), André de Carvalho RAMOS (2013, p. 197-198) claims there is a single Inter-American regional human rights
mechanism of protection, divided into two systems. The first of these systems, called by the author of "System of the Organization of American States", would be composed of the OAS Charter (its constitutive treaty) of 1947, reformed by the Protocol of Buenos Aires in 1967, in conjunction with the American Declaration of Rights and Duties of Man, of 1948. All OAS Member States would belong to this system. Here, the Inter-American Commission on Human Rights would receive the complaints made against any Member State, about violations of the American Declaration of Rights and Duties of Man (which is not a treaty, and is not a binding document). If there is a violation by the State, the case can be brought to the General Assembly, the Organization of American States, which can suspend the State of the OAS, and only admit the State again when it returns to fulfill its obligations. Until today, the only two cases of human rights violations that led to the suspension of the State by the General Assembly of the Organization were the cases of Haiti in 1991 (when the coup against the elected President Jean-Bertrand Aristide occurred), and Honduras in 2009 (at the time of the coup against President Zelaya). So, the only two cases brought by the Commission to the Assembly were violations in mass of human rights that coincided with the rupture of the democratic order in the respective States (RAMOS, 2013, p. 197-2013).

The other system pointed to by the author is called by him as "System of the American Convention on Human Rights", and would be composed only by a few Member States of the OAS. In this sense, explains RAMOS (2013, p. 197-198) that, graphically, we'd have two concentric circles: a broad circle composed by the system of the Charter of the OAS, with the 35 Member States of this Organization, and a smaller one, composed by the 23 Member States of the OAS that are part of the American Convention on Human Rights. According to the author: "[...] the two systems share, in essence, the same origin, the OAS. The difference is in the denser commitment signed by members of the second system, which includes a human rights specialized Court, the Inter-American Court of Human Rights [...] " (RAMOS, 2013, p. 198. Translation by the author). That's exactly what André de Carvalho Ramos calls "system of the American Convention on Human Rights" which the majority of the authorized bibliography on International Human Rights Law calls "Inter-American human rights system". Thus, I will use this nomenclature to refer to what Ramos calls System of the American Convention on human rights.

The Inter-American human rights system is basically composed of two bodies: the Inter-American Commission and the Inter-American Court of Human Rights. The
IACHR originated in a resolution (Resolution VII of the V Meeting of Consultation of Ministers of Foreign Affairs, in Santiago, Chile, 1959), rather than a treaty. Its mandate, according to its status of 1960, was limited to the promotion of human rights. The Commission used to enjoy a unique position in the system, having a certain autonomy in relation to it, mainly because IACHR members were (and still are) in their personal capacity, not as representatives of States parties of the OAS. After IACHR started to work, its functions were being gradually expanded. An example of this is that the resolution IX of the VIII meeting of consultation of Ministers of Foreign Affairs (in Punta del Este, Uruguay, 1962) recommended the OAS Council to approve an amendment of the Statute of the IACHR, to enlarge its mission. And that's what happened in the second Inter-American Conference on Human Rights, which took place in Rio de Janeiro, in 1965. On that occasion, it was approved the resolution XXII of this Conference, which expanded the powers of the IACHR to receive petitions and communications about violations of human rights. From that moment, the powers of the IACHR began to include, in addition to a system of reporting, examination and communications, visits to States (as long as they agree), in addition to preparing studies and seminars (TRINDADE, 2003, p. 34-35).

Then, in 1967, it was approved the first Protocol of reforms of the OAS Charter, also called Protocol of Buenos Aires, for having been approved in that town. With this treaty, the Inter-American Commission on Human Rights arose as one of the main organs of the Organization of American States. Thus, the IACHR had its institutionality and its legal status strengthened, since it gained conventional base, and thus was put an end to any objections to its jurisdiction (TRINDADE, 2003, p. 35-36).

A second step towards the institutionalization of the Inter-American human rights system was the approval of the American Convention on Human Rights (also known as Pact of San José of Costa Rica), in 1969, which came into force in 1978, when it was hit the minimum number of ratifications for it. In 1965, four years before the adoption of this Treaty, the second American Conference on Human Rights had already decided by the drafting of this Convention, and the draft was elaborated by the IACHR in 1967, and approved by the same the following year. The text was presented to the Member States of the OAS and, after one year, the Inter-American Conference Inter-American specialized human rights Special (which took place in San José of Costa Rica, in 1969) approved the American Convention on human rights (TRINDADE, 2003, p. 45-46).
The Pact of San José of Costa Rica also created the Inter-American Court of Human Rights, a huge step in the institutionalization of human rights in the Inter-American sphere. This Court has a contentious jurisdiction, which occurs within a biphasic model of petitioning (detailed below), and a consultative competence, for which, any Member State the OAS, or not part of the Pact of San José, may request the opinion of the Inter-American Court in relation to the interpretation of this treaty, or any other instrument Inter-American human rights protection (PIOVESAN, 2012, p. 335).

The American Convention on Human Rights presents a catalogue of civil and political rights, mainly, not showing much concern for economic, social and cultural rights. Chapter III of the Pact of San José of Costa Rica refers to economic, social and cultural rights in just one article (Article 26), but briefly. It was determined that States parties to the Convention seek to achieve, progressively, and on the extent of their resources, the full implementation of such rights (RAMOS, 2013, p. 217-218).

This treaty also adopted a two-phase model for receipt of petitions, under clear influence of the European Convention on Human Rights, before being amended by its Protocol No. 11 (which extinguished the European Commission of Human Rights, keeping only the European Court as a receiver of petitions). In this sense, within the Inter-American human rights system, the petitioner (which may be the victim of the violation of human rights, or any other individual, group of individuals or civil society organizations) can only submit petitions to IACHR. Then, the Commission appreciates the petition by checking both the conditions of admissibility, as the merit of the case presented (RAMOS, 2013, p. 219-220).

If the requirements of admissibility are not present, the Commission archives the case. If they are present, it tries a conciliation between the petitioner and the State. If this is not possible, the Commission inaugurates a contentious phase, the phase of the first report, in which the IACHR deliberates whether or not there was human rights violations in that case, and presents recommendations to the State. This first report is confidential, restricted to the parties. Three months after the first report was send to the State, if the case has not been resolved, and if the offending State has recognized the binding jurisdiction of the Inter-American Court, and IACHR deems convenient, it submits the case to the Court, in its contentious jurisdiction, whose decisions have binding force for the State, being valid

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2 On the case of States which are not part of the American Convention, the IACHR can decide only about violations of the American Declaration of the Rights and Duties of Man. But, if the State ratified the San José Pact, the Commission can take decisions about violations of this treaty.

If the Inter-American Commission on human rights decides not to take the case to the Inter-American Court, it shall draw up a second Report, which is public.

3- Brazil and the Inter-American Human Rights System

It is important to mention the role played by Brazil on the formulation of what we know, nowadays, as the Inter-American Human Rights System. Initially, Brazil the behavior of that system. An example was the Brazilian proposal, on the IX International Inter-American Conference of 1948, of creation an international judicial organism with the goal of promoting human rights on the Americas. Another example was its advocacy on 1954, during the X Inter-American Conference, in Caracas, in favor of recognizing the individual as a subject of International Public Law (VENTURA, CENTRA, b, p. 1-2). This phase coincides with what CERVO and BUENO (2008, p. 466) classify as the first stage of the Brazilian human rights foreign policy, which starts with the preparatory work of the Universal Declaration of Human Rights, when the State was assertive on the promotion of human rights on the international plan.

But, with the military coup of 1964, that scenario changed. From that moment, it started a second stage of the Brazilian human rights foreign policy, on which the State started to adopt a more defensive approach about the topic (CERVO, BUERNO, 2008, p. 466; VENTURA, CENTRA, b, p. 2).

Even with that defensive approach, due to mass human rights violations that happened during the Brazilian military regime, the Brazilian government sent representatives to the Conference of San José of Costa Rica of 1969, which approved the Inter-American Convention of Human Rights. It may seems a contradiction, since the Institutional Act nº 5 (AI-5)³ was edited by the Brazilian military dictatorship on the year before. This paradox can be explained by the fact that Latin-american dictatorships where trying, on that moment (Brazil was not the only country on this situation on the occasion:

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³AI-5 was the fifth of a series of decrees issued by the Brazilian military regime after the 1965 coup, giving extraordinary powers to the President, and suspending many fundamental rights.
the whole continent was full of States with dictatorial regimes supported by the United States) to show

“an appearance of normality, and a similarity with other States of the international society, obtaining, with it, legitimacy and support to the perpetuation of those regimes. Bearing it in mind, nothing better than adopting a discourse about respect to human rights and democracy, without the intention of putting it in practice” (RAMOS, 2013, p. 214).

So, although Brazil sent representatives to the Conference of San José of Costa Rica, there was not any intention, by this State, to become a member of the Inter-American human rights system, or in ratifying treaties that protect those rights.

This phase lasted until the period of democratic transition, when the Brazilian foreign policy on human rights entered into its third phase, and the State returned to policy of respect for and promotion of human rights (CERVO, BUENO, 2008, p. 467). In this context, human rights gains relevance, especially with the approval of the Brazilian Constitution of 1988 (also know as "The Civic Constitution"), which incorporates several of the rights contained in international human rights treaties, in addition to erecting the prevalence of human rights as a principle governing Brazil in its international relations (art. 4, item II of the Federal Constitution of 1988). In addition, during the same period, the Brazil adhered, obeying the opinion of Antônio Augusto Cançado Trindade (at the time, legal adviser of the Ministry of Foreign Affairs), an important number of human rights treaties (PIOVESAN, 2012, p. 77-94; TRINDADE, 2006, p. 225-228).

It was in this context that the Brazil joined the American Convention on Human Rights in 1992, and accepted the compulsory jurisdiction of the Inter-American Court of Human Rights in 1998, and, therefore, became subjecting to its decisions. This process of ratifying the Pact of San José of Costa Rica has been a rather slow process. The presidential message, requesting Brazil's accession to that Treaty was forwarded to the Brazilian Congress by then-President José Sarney in 1985, but it was only in 1992 that the Congress approved this accession. Thus, in 25 September of the same year, the country deposited its instrument of accession to the Pact of San José of Costa Rica, without recognizing the compulsory jurisdiction of the Inter-American Court of Human Rights in litigation matters (RAMOS, 2013, p. 215).

This recognition, by Brazil, of the binding jurisdiction of the Inter-American Court of human rights, only occurred in the year 2002. The application of that recognition was forwarded by then-President Fernando Henrique Cardoso Republic through the Presidential Message No. 1070, of September 8th, 1998, and was approved by Congress
through Legislative Decree No 89/98, on 3 December of that year. Thus, Brazil recognized the compulsory jurisdiction of the Court, but with a chronological reservation, by which the State only recognizes the compulsory jurisdiction of the Inter-American Court in relation to facts that happen after this recognition.

4- Decisions of the Inter-American Commission of Human Rights about the Brazilian Northern Region

Between the decisions of IACHR related to merit decisions and friendly settlements until 2012, 21 are about human rights violations on Brazil, existing there 19 merit decisions, and 2 friendly settlements. Of those decisions, 6 are about violations on the Brazilian Northern region. It means that 28,57% of the decisions taken by IACHR, on friendly settlements and on merit, are about violations on that part of the country.

Of those decision, 3 cases are about violations at the state of Pará, one at Rondônia, one happened at Roraima, and one happened on the states of Roraima and Amazonas, on the border region of those states. So, Pará has 14,28% of the total number of human rights violations on Brazil, Rondônia has 4,76%, Roraima has the same number, and violations on the border region of Roraima-Amazonas, the same percentage. When analyzing the universe of violations on the Brazilian Northern region, it turns out that the para contributes 50% of the violations of the region, Rondônia 16,66%, Roraima with the same number, and violations on the border between Amazonas and Roraima, the same percentage.

The other States that make up the Brazilian Northern region (Amapá, Acre and Tocantins) do not appear in any case so far. This does not indicate necessarily that there are not human rights violations. However, it may be an indication that there is not much information about how petitioning to the Inter-American human rights system in those States, which would lead to under reporting of cases to that system.

As tot he types of human rights violations, on all the cases happened at Pará, it is evident that violations are related to violence on rural areas. On two of them (Inform nº 24/1998-Case 11287-João Canuto de Oliveira; Inform nº 59/99-Case 11405-Newton Coutinho Mendes and others), the victims were involved on conflicts on those areas. João Canuto de Oliveira, victim of the first case, was a leader of the Rural Workers' Union at Rio Maria do Sul, state of Pará, and was killed, after being threat of death many times, and
notifying those threats to the police, due to conflict for lands. On the other case, also motivated by land dispute, is about the killing and bodily injury of people involved on those conflicts. Those human rights violations would form be a part of a premeditated campaign by land owners against rural workers and human rights defenders, with the support of the authorities of the state of Pará. All those murders also happened after many threats which were denounced to the police, but without much effect.

The third case of Pará, on which a friendly settlement was achieved, also related to violence on rural areas, is about the exploitation of rural workers on conditions similar to slavery. On that case (Report Nº 95/03. Case 11.289. Friendly Settlement. José Pereira), José Pereira, the victim, was hit by a gunfire by a firearm while trying to flee from a farm at which he was working under similar conditions to slavery, but survived, while another worker who tried to escape with him was killed by the gunfire. The victim only survived because he pretended to be dead. So, their bodies were taken by the killers in a truck, and abandoned in a field. Pereira managed to reach a nearby farm and was rescued, and presented his complaint.

The case occurred on the border between Amazonas and Roraima is the case Yanomami (Resolution 12/85 Yanomami. Case 7615). This case of human rights violations was caused by the construction of the Transamazônica Highway BR 2310, and the non-demarcation of the indigenous lands of the Yanomami. As a result of contact with the white population that began to migrate to the region not demarcated, the natives started to contract various diseases that they had no means to treat, in addition to frequent conflicts with the miners, for example. Therefore, the main theme here is rights of indigenous peoples.

The Rondônia case (Inform nº 32/04. Case 11556. Corumbiara) is also on rural violence. The context of the case was the existence of an occupation of the Landless Workers' Movement (MST) on a farm. An injunction was issued by a local judge, determining the refund of possession. Upon arriving at the farm to accomplish the judicial order, the police met resistance from the MST, and failed to comply with it. Later, the judge ruled the military police state of Rondônia to send a larger contingent of men to the farm, but taking precautions in order to not happen a tragedy in the region. But when the police, on the second occasion, was to fulfill the order at dawn, it found, again, resistance from the movement. However, even after submitting the entire population of the MST occupation, surrendering it, committed torture and murder during this period. The episode
ended with many deaths, being identified by forensics that several shots were short, indicating extrajudicial execution. Among the dead was a girl of seven years. There were also many wounded in the case.

The case of Roraima (Inform nº 19/98. Case 11516. Ovelário Tames) is about the incarceration and aggression against Ovelário Tames, an indigenous man, by cops. Although he was complaining about much pain after suffering aggression by the cops, he did not receive medical care, and died on jail, due to those aggressions.

5- Conclusions

As mentioned above, this paper is merely exploratory, and, because of it, everything presented here have some limitation. But some partial conclusions can be presented.

The first conclusion we can achieve is that, although at three states at the region do not present human rights violations cases on the Inter-American human rights system, at least by what was analyzed until now, it does not necessarily mean there are not human rights violations there. Actually, it can mean that the system is not well known there.

Another conclusion is that rural violence is a huge cause of human rights violations on the Brazilian Northern region, corresponding to a big part of the cases under analysis. This happen because of concentration of land and richness on the region. Also, as perceived on two cases analyzed here, indigenous people constitute a population vulnerable to human rights violations on the region.

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