BRAZILIAN POST-TRANSITIONAL JUSTICE AND THE INTER-AMERICAN HUMAN RIGHTS SYSTEM

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Introduction

Thanks to the Latin American Centre, and to Francesca Lessa in particular, for the kind invitation.

My talk today is concerned with current processes of post-transitional justice in Brazil. By this I mean, to borrow from Cath Collins, the "prospects for the revision of [the] transition-era human rights settlement" in Brazil.

The focus of my remarks will be on the role of the Inter-American Human Rights System, for reasons that I hope will become apparent. In particular, I will emphasise what types of transitional justice policies may be required from Brazil in light of the *Gomes Lund* ruling by the Inter-American Court of Human Rights from November 2010. I will draw out some key implications of what the ruling, and the Brazilian government's responses to it, tell us about the prospects for and limitations on Brazilian post-transitional justice, and arguably, Brazilian democracy more broadly.

I. Transitional Justice and the IAHRS

Let me start however with a few preliminary remarks on the Inter-American Human Rights System (IAHRS).

The IAHRS came of age through its engagement with the dilemmas of transitional justice. At the beginning of the 1980s, the IAHRS was a weakly institutionalised and mainly promotional regional system consisting of a Commission, and a Court without any cases. From the mid-1980s onwards however, the IAHRS started to increasingly insert itself into transitional justice struggles in multiple ways.

In particular, the Inter-American System has played a central role in the construction of a set of rules, norms and principles of transitional justice. In the early stages of the democratic transitions in the Southern Cone in the 1980s, the international influences on transitional justice were limited. Confronted with the dilemmas of transitional justice, there were few international precedents to draw from to guide government policies. International human rights jurisprudence at the time was of limited concrete help.

Moreover, in the early stages of the transitional period, the regional human rights system was not sufficiently developed to play an active role in the attempts to hold the military accountable for their human rights abuses. In terms of human rights activism, increasingly professionalized human rights NGOs started to use the IAHRS more actively, but the learning process among the groups involved was still in its incipient stages.

However, the influence of the IAHRS would grow significantly over time, especially as the system developed a jurisprudence that emphasised the right to truth and the right to individual judicial redress.

More specifically, over time, the IAHRS has adopted an increasingly robust position on the legitimacy of amnesty laws in the region. Most famously, in the 2001 *Barrios Altos* judgement the Inter-American Court ruled that two self-amnesty laws granted by the Fujimori regime to itself violated the victims' rights of access to justice. The *Barrios Altos* case, together with subsequent cases related to amnesty provisions in Chile, Uruguay, and, of course Brazil, consolidated the IAHRS' position on impunity.

The Court has defined impunity as a systematic failure to investigate, arrest, prosecute, adjudicate, and convict those who are responsible for violations of rights protected by the American Convention. Its condemnation of impunity is twofold. One the hand, for societies, impunity "fosters the chronic repetition of human rights violations." On the other, for victims and their family members impunity fosters "the total defenselessness of the victims and their next of kin, who have the right to know the truth about the facts".

In sum, following the transitions to democracy in Latin America, the Inter-American system has played an important role in developing norms regarding transitional justice as they pertain to the scope of amnesty laws in particular. The IAHRS' engagement with TJ has given rise to a broad set of obligations that public institutions have to ensure accountability and reparations. The key principles that the IAHRS has developed in response to transitional justice include:

- a victim-oriented approach;
- the right to effective judicial remedy – i.e. right to a fair trial and judicial protection – in other words, access to justice;
- the right to truth; and

- increasingly comprehensive and 'holistic' reparation policies.

Now, it is important to note that the IAHRS is a human rights entity and can therefore only attribute state responsibility for violations. However, it is clearly the case that the IAHRS jurisprudence, together with the rules, norms and principles I have briefly outlined, have fed into domestic criminal proceedings in a number of Latin American countries where trials are currently underway.

Indeed, there is a discernible regional trend of "post-transitional justice" increasingly challenging the political bargains of the democratic transitions. This trend is most clearly reflected in the rising number of human rights trials regarding the past underway in a number of countries in Latin America, including Argentina, Chile, to some extent in Peru, Uruguay, and most recently in Guatemala.

II. Brazil and the IAHRS

Now, before turning to TJ in Brazil specifically, it might be useful to get a sense of the relationship between the IAHRS and Brazil, and how it has developed over time.

There are three distinct, yet partially overlapping, dimensions of Brazil's relationship with the IAHRS: (i) the extent of formal state commitment and government support; (ii) patterns of civil society mobilisation of the IAHRS; and (iii) depth and breadth of domestic constitutionalisation, and judicial attitudes.

1. Formal Commitment

First, Brazil's formal commitment to regional human rights instruments is notable. Brazil has ratified the main regional human rights treaties of the Inter-American Human Rights System.

Despite its ratification record, traditionally Brazil has not had a clearly defined presence within the IAHRS, for a number of reasons. In part, until quite recently, the relative neglect of the regional human rights system could be explained by the fact that Brazilian governments' engagement with international human rights has tended to be projected outside the region and towards the UN. Indeed, Brazil was, for example, one of the last OAS member states in Latin America to recognize the jurisdiction of the Inter-American Court of Human Rights (1992).

Also, the prevailing Brazilian perception of having a self-contained legal system combined with a lingering reluctance to accept international scrutiny of the country's domestic human

rights record on sovereignty grounds has made Brazil a relative latecomer to the regional human rights regime (at least in comparison with its South American neighbours).

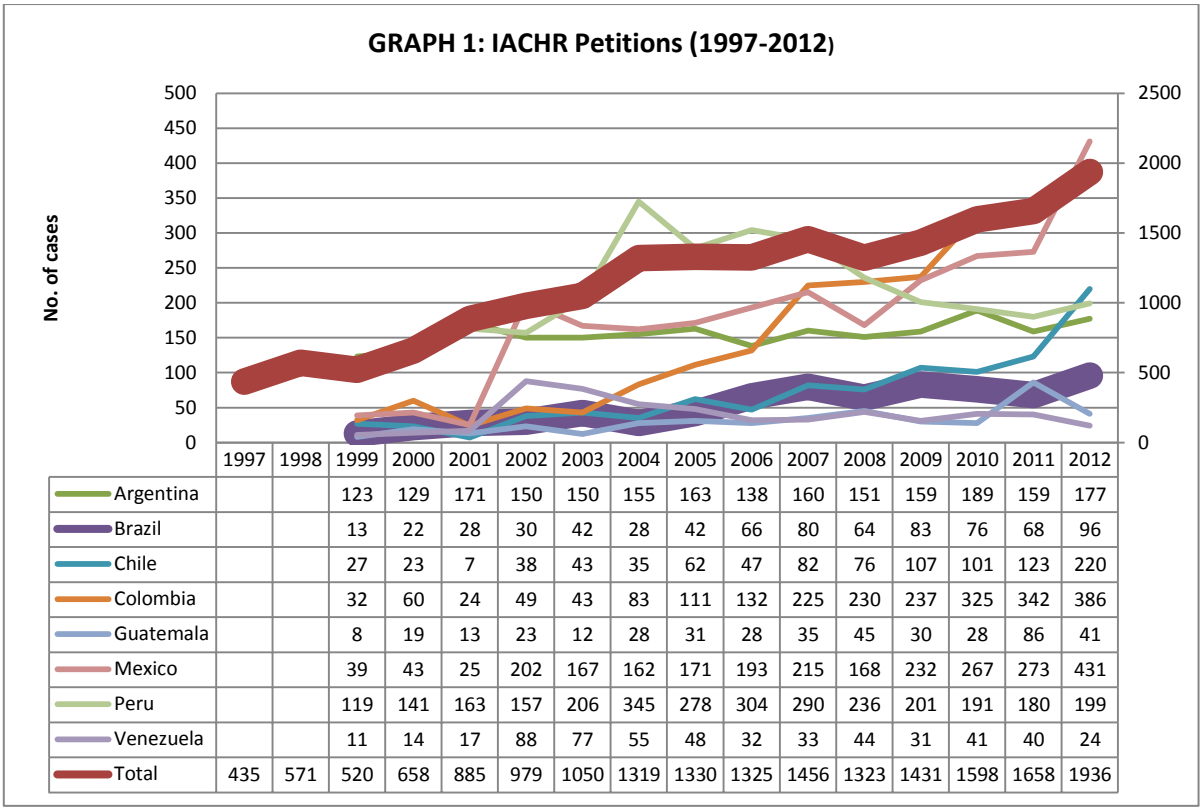
Yet, it should be noted that Brazil's diplomatic relationship with the System has evolved over time. Starting with the Fernando Henrique Cardoso government, the Brazilian state moved from an obstructionist to a more cooperative relationship with the IAHRS reaching a number of friendly settlement agreements with the Inter-American Commission.

Moreover, Brazil supported the candidacies of Antônio Cançado Trindade to the Inter-American Court of Human Rights (serving as judge on the Court from 1995 to 2006) and of Hélio Bicudo, a deputy of the Workers' Party and former prosecutor in São Paulo, who was elected member of the IACHR in 1997 (and served 1998-2001). And of course, Paulo Sergio Pinheiro has played an active role in various capacities on the Inter-American Commission. And, recently, Paulo Vannuchi's reinstated candidacy to the Inter-American Commission was successful.

2. Human Rights Mobilisation

The second dimension in evaluating the relationship between Brazil and the IAHRS is to consider how human rights organisations seek to use it; the 'demand' for the IAHRS, in other words.

Now, as a general trend, the use of the Inter-American Commission by human rights organisations across Latin America, in particular, has increased dramatically in recent decades.



	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Argentina			123	129	171	150	150	155	163	138	160	151	159	189	159	177
Brazil			13	22	28	30	42	28	42	66	80	64	83	76	68	96
Chile			27	23	7	38	43	35	62	47	82	76	107	101	123	220
Colombia			32	60	24	49	43	83	111	132	225	230	237	325	342	386
Guatemala			8	19	13	23	12	28	31	28	35	45	30	28	86	41
Mexico			39	43	25	202	167	162	171	193	215	168	232	267	273	431
Peru			119	141	163	157	206	345	278	304	290	236	201	191	180	199
Venezuela			11	14	17	88	77	55	48	32	33	44	31	41	40	24
Total	435	571	520	658	885	979	1050	1319	1330	1325	1456	1323	1431	1598	1658	1936

However, as can be seen in this graph, in terms of the number of petitions to the Inter-American Commission, comparatively few cases are related to Brazil. This is particularly noteworthy when comparing with other Latin American countries, and considering the relative size of the Brazilian population, and the human rights challenges facing Brazilian society.

There is a historical background to this reluctant engagement with the regional human rights system. Comparatively few cases were submitted to the Inter-American Commission during Brazil's military regime. Following the democratic transition, Brazil has had comparatively few dealings with the IAHRS, and by the mid-1990s only a handful of the several hundred cases pending before the IACHR concerned Brazil. This pattern of recourse to the IAHRS continued throughout the 2000s.

Hence, although Brazil has had a very vibrant civil society since the transition to democracy, it has not actively taken recourse to the regional human rights regime. A number of factors can be identified to explain this:

In first instance, one of the reasons for the relatively late emergence of strategic human rights litigation in Brazil, for example, has been the dominant role of public prosecutors in taking on human rights cases. Some argue that this has led to a certain crowding out of legal advocacy by civil society activists. Moreover, many Brazilian civil society organizations have chosen more explicitly political advocacy strategies over the legalistic discourse of human

rights. Also, given the extensive set of human rights enshrined in the 1988 Constitution, activists have tended to use national law rather than international human rights law. And, it should be noted, up until the mid-1990s at least, Brazilian authorities put pressure on the Inter-American Commission not to recognize cases from Brazilian petitioners.

Overall, the combined effect has been a relative lack of awareness within Brazil's human rights community of the resources and opportunities provided by the Inter-American System. Nonetheless, a number of human rights advocacy groups have emerged, such as *Conectas* and *Justiça Global*, that are increasingly using strategic litigation and that consciously draw on international human rights law, including the Inter-American System, in their domestic human rights advocacy.

3. Domestic Judiciaries and the IAHRS

The third dimension of understanding the relationship between Brazil and the IAHRS is to consider the extent to which regional human rights standards and instruments are incorporated into domestic legal systems and how the jurisprudence of the IAHRS affects domestic judicial processes.

Clearly, the impact of the human rights standards developed by the IAHRS depends on the extent to which domestic legal systems incorporate these standards. This points to the importance of developments at the domestic level as governments pass laws to ensure constitutional safeguards for the protection of human rights. Indeed, in many states of Latin America human rights have been 'constitutionalized'. And, of course, there is a distinguished Latin American constitutional tradition that incorporates extensive human rights protections.

However, as is well known, there is widespread variation in the effective enforcement of human rights within domestic legal systems. There are also significant differences in the willingness of judges to engage with international human rights law, including the jurisprudence of the Inter-American Court.

Understanding the sources of this variation can be tricky. Some key factors include different degrees of judicial independence (a variable that can cut both ways), but also divergent national legal traditions, patterns of legal education, and engagement with transnational legal communities. The key point to make here is that domestic judges are important political actors that shape the ways in which international human rights are applied domestically.

With regards to Brazil specifically, the Brazilian judiciary has traditionally displayed resistance to international (human rights) law and institutions. Indeed, in Brazil the constitutional status of international human rights treaties ratified by the Brazilian state appears to be a matter of legal debate still. For example, the Brazilian Federal Supreme Tribunal (STF) has taken a restrictive view on the status of international human rights treaties within the Brazilian constitution. From what I understand, the majority position of the STF is that international human rights treaties have equal status to federal law.

This stands in clear contrast to Argentina, for example, where the main international human rights treaties have constitutional standing. Also, in terms of substance, international human rights norms figure prominently in all national constitutions across Latin America, but the Argentine Constitution is "a unique, verbatim replica of [international human rights] treaties."[1] From a regional and comparative perspective hence, Argentina is exceptionally open to international human rights law.

In the case of Brazil, simply put, where domestic laws come into conflict with international obligations, domestic laws tend to apply. In other words, the Brazilian judiciary has traditionally been reluctant to accept the notion that international agreements might override the national constitution and domestic laws.

Again, I understand that there are some very substantive debates in Brazilian constitutional law circles, and that there have been some incipient changes towards a more expansive interpretation of the legal status of Brazil's international human rights commitments in relation to the constitution in recent years.

And yet, there appears to be some ideological resistance among sectors of the Brazilian judiciary to use international human rights law. It should also be recognized, however, that there is a widespread sense in some political and legal circles that international human rights law is superfluous given the extensive human rights guarantees enshrined in the 1988 Constitution.

So, in short:
Compared to most of its regional neighbours, Brazil has been a relative latecomer to the IAHRS, though there have been important changes during the last decade or so.

Let me now turn to the role of the IAHRS in shaping post-TJ developments in Brazil more specifically.

[1] Koven Levit, 'Constitutionalization of Human Rights' p.292.

III. Brazil, Transitional Justice, and the IAHRS

1. Transitional Justice in Brazil

Now, in terms of transitional justice, Brazil has tended to be viewed as an outlier in South America.

Unlike other countries in the region, Brazil has not followed the pattern of challenging the military regime's self-amnesty. The 1979 Amnesty Law remains intact, and was upheld by the Supreme Federal Tribunal (*Supremo Tribunal Federal*) in 2010. Brazil ended military rule in the mid-1980s, but it took until 2012 before an official truth commission was created. And, while there have been some scattered attempts to pursue prosecutions in recent years to address the military regime's torture, deaths, and disappearances, such accountability efforts have not gained much momentum to date.

The factors that explain as Brazil's perceived transitional justice exceptionalism in regional terms have been extensively discussed in the TJ literature and include:

- The balance of power during transition with the military very much in charge.
- The character of the Amnesty Law as not a pure self-amnesty by the military regime, but as a result of a broader campaign in favour of amnesty, which has led to the emergence of the Amnesty Law as a reference point for transitional justice in Brazil.
- The comparatively low levels of repression during the military regime combined with a memory of good economic performance, though extreme care needs to be exerted when evaluating the military's repressive record in particular, which included multiple forms of violence.
- The nature of the authoritarian legacies of the military regime, with highly legalistic military rule.
- Strong authoritarian enclaves in democratic Brazil, with robust resistance from both the military and parts of the judiciary to revisit the record of the military regime.
- Transitional justice in general having limited political support in Brazilian politics, and marginal significance in comparison to other human rights challenges in democratic Brazil.
- And, as pointed out by Anthony Pereira, the Brazilian political system is not conducive to transitional justice policies. For example, there have been significant reforms of the political party system since the transition. The party that might have been most strongly in favour of the pursuit of TJ, the PT, has been lukewarm at best. Also, the coalitional presidential system in Brazil, as pointed out by Tim Power, raises the costs of policy innovation. Similarly, the decentralised nature of the Brazilian political system have contributed to the absence of an overall national TJ policies,

and the emergence of a multitude of state-level initiatives (e.g. over 50 Truth Commissions).

- And, finally, Brazil has been comparatively immune to international transitional justice pressures.

It is this final point, which brings me more concretely to the *Gomes Lund* case before the Inter-American Court of Human Rights.

2. *Gomes Lund*

First, very briefly, what is *Gomes Lund* about; how and why did the case end up before the Inter-American Court; and why is it significant?

The *Gomes Lund* case is related to the Brazilian military's counterinsurgency campaign against militants of the Brazilian Communist Party, between April 1972 and January 1975 – in the area of the Araguaia river banks in the state of Pará. Members of the group were detained, and after being identified, they were killed and buried secretly. None of the individuals was acknowledged as dead, remaining in the status of persons who had disappeared for political reasons.

In the beginning of the 1980s, attempts by family members of some of the disappeared members of the guerrilla were blocked by the broad interpretation by judges of the 1979 Amnesty Law. The Amnesty Law, adopted as a measure to facilitate a political opening in Brazil, was initially targeting the political crimes committed by those struggling against the military regime, but the interpretation of the Law was extended to include military and police officials who had committed human rights violations.

In 1995, after several years of the case being passed back and forth between lower courts and courts of appeals in Brazil, the relatives, represented by several local and international human rights groups,[2] submitted a petition against the Brazilian State to the Inter-American Commission. The case was named for Júlia Gomes Lund, whose son Guilherme Gomes Lund, a member of the Araguia guerrilla, disappeared in 1973 when he was 26 years old.

In October 2008, the Inter-American Commission finally found in favour of the petitioners, and in March 2009 it submitted the case to the Inter-American Court. The Commission argued, effectively, that the Brazilian government's unwillingness until then to declassify the

[2] CEJIL, the Americas/Human Rights Watch, the Grupo Tortura Nunca Mais (GTNM/RJ) and the *Comissão de Familiares de Mortos e Desaparecidos Políticos de São Paulo* [Committee of the Families of Those Who Died or Disappeared for Political Reasons] (CFMDP/SP)

documents on the military operations in the Araguaia region constituted a denial of the 'right to truth'. It also argued that the Brazilian Amnesty Law violated Brazil's international human rights obligations to the extent that it prevents the investigation, prosecution and punishment of serious human rights violations, including forced disappearances and extrajudicial executions.

In November 2010 the Inter-American Court published its ruling in *Gomes Lund*. In essence, the Court found that Brazil is responsible for the forced disappearance of 62 people between 1972 and 1974 in Araguaia. And, it ordered the Brazilian State to investigate and prosecute those responsible for the crimes.[3]

With regards to the Amnesty Law, the Court argued that: "The provisions of the Brazilian Amnesty Law that prevent the investigation and sanctioning of severe human rights violations are incompatible with the American Convention, have no legal effects and cannot continue to stand in the way of investigating the facts of this case."

The Court, then, ordered the Brazilian state to remove all practical and judicial obstacles to investigating the crimes, to establishing the truth as well as the responsibility of those involved. The Court also emphasised the right to access information, including the principle of maximum disclosure and the need to justify any refusal to provide information.

These elements of the ruling were widely expected and are in line with the increasingly robust jurisprudence of the Inter-American Human Rights System on amnesty laws.

The *Gomes Lund* ruling makes Brazil the fourth country in Latin America – after Peru, Chile, and Uruguay – to have its amnesty law invalidated by the Court. Only Argentina and Uruguay have, however, to date, revoked their respective amnesty laws.

3. The Politics of Compliance with *Gomes Lund*

What are some of the implications of the Court ruling for transitional justice in Brazil?

First, it needs to be recognized that a number of important measures have already been taken by successive Brazilian governments in the area of transitional justice, particularly in the area of reparations. Successive Brazilian governments have emphasised limited truth efforts and compensation to victims.

[3] In *Gomes Lund v. Brazil*, the Inter-American Court found that Brazil violated its obligations under the American Convention, including the rights to life, liberty, and personal security (Articles 1, 4, and 7), juridical personality (Article 3), humane treatment (Article 5), fair trial (Article 8), and judicial protection (Article 25) by forcibly disappearing the victims and withholding access to truth and information from their families.

It should also be noted that in the immediate aftermath of the *Gomes Lund* ruling, the Brazilian government was fairly responsive. Paulo Vannuchi, Brazil's then Secretary for Human Rights, called the court's decision "very important to continuing to develop human rights" in Brazil. "We need to find the bodies of those resistance fighters and return them to their families," Vannuchi said; "[t]his is indispensable to talking about democratic reconciliation, about being one united country."

However, with regards to the Amnesty Law and demands for accountability, in April 2010 the Brazilian Supreme Tribunal upheld the amnesty law in a ruling just a few months before the Inter-American Court's judgement in *Gomes Lund*. It should be noted however, that in its 7-2 vote the Tribunal considered the amnesty law to be primarily a political matter, and it recommended that the Brazilian Congress takes up the issue and considers the future status of the law.

The decision by the Tribunal could therefore be interpreted as not constituting an insurmountable barrier for Brazilian political forces to carry out the ruling of the Inter-American Court. Moreover, the current President of the Tribunal, Joaquim Barbosa, has suggested that there is scope for reinterpretation of the Amnesty Law by the Tribunal should the Law come before it once more.

This raises the question: *does Brazil have to overturn its amnesty law to comply with the Gomes Lund ruling?* A simple response to that question could be: not necessarily. After all, it could be argued that there might be ways to circumvent amnesty laws and to mitigate for the impunity effects that such laws may have. Indeed, there are examples in Latin America where transitional justice proceeds without amnesty laws being overturned – e.g. as demonstrated, to some extent, in Chile, and in Argentina prior to the latter's overturning of its amnesty laws.

And yet, there is a certain momentum building up in Latin America against amnesty laws. Both Argentina and Uruguay have overturned their respective amnesty laws. Moreover, the Inter-American Court's judgment requires Brazil to ensure that the Amnesty Law does not preclude the investigation and punishment of human rights violations committed during the military regime and to establish legislation criminalizing forced disappearances. This is likely to be a tall order in the absence of, at the minimum, some quite significant re-interpretation of the provisions of the Amnesty Law by the Brazilian judiciary.

This raises the further question*: does Brazil have to conduct trials to comply with the Inter-American Court ruling?* Again, not necessarily. Trial justice is only one form of accountability. However, will it be possible to maintain the Amnesty Law, given the normative presumption against impunity that has strengthened across Latin America, and beyond the region, in recent decades?

In the case of compliance with *Gomes Lund* therefore, at the minimum, a strong case can be made that the responsibility lies with the Brazilian government to demonstrate that any transitional justice measure it implements – such as the National Truth Commission – advances accountability.

4. The National Truth Commission

It is precisely in this context, therefore, that I think the work of the National Truth Commission is very interesting. The creation of the Truth Commission has been promoted by some as a significant advance and as a crucial step towards accountability for past human rights violations.

Yet, various critiques have been leveled against the Truth Commission. Many have pointed out that the mandate of the Commission is limited. Although its original mandate has been extended, the remaining time period to complete its work is limited, and the period covered – 1964 to 1985 – is extensive. The Commission has the power to call witnesses to investigate abuses committed both by the military and by guerrillas. But, it has no prosecutorial powers. And, in line with the Amnesty Law, it will have no powers to investigate or condemn suspects.

Moreover, there have been disagreements within the Truth Commission between the members, apparently in relation to how the Commission is meant to work, and how it can and should contribute to its primary objectives. On the one hand, there are those who see the Commission as a catalyst for participation and as a platform for societal mobilisation and for victims. On the other there are those who see the role of the Commission as primarily being about an objective quasi-judicial evaluation of evidence and witness statements and the production of an authoritative report on the Commission's findings at the end of its mandate.

There are indeed strong arguments in favour of both models, but the main point here is that it still does not seem clear to the Commissioners themselves what role the Commission should have. The Commission has also been rocked by resignations (with Commissioners not being replaced), and the Dilma government's public support for the work of the Commission has been lukewarm at best. There are also indications of strong resistance to the work of the Commission from within the military establishment. And, the media coverage of the Commission is generally quite limited, and when it figures in the news the Commission tends to be cast in negative light.

On the other hand, for many any official transitional justice initiative is better than none. Some argue that the creation of the Commission constituted a major advance and it should be welcomed as such. For some, the Commission could provide an important catalyst for truth and accountability efforts in Brazil. And its report could offer an authoritative contribution to the construction of the country's recent past.

Yet, the Truth Commission's mandate includes the preservation of the Amnesty Law, and, arguably, its main impunity effects. For many this is what to be expected from any official transitional justice initiative in Brazil, where political elites, of various stripes, strongly maintain their policy preference for 'truth' over 'justice'.

The main point here however, is that in terms of compliance with the *Gomes Lund* ruling of the Inter-American Court the Truth Commission will not be enough.

We can only speculate of course as to what future TJ trajectories in Brazil may look like. First, it appears highly unlikely that the Brazilian Amnesty Law will be overturned. Though, time will tell whether it will remain possible for the Brazilian government to put a full stop to increasingly concerted legal efforts to hold individual military and police personnel to account for their involvement in human rights violations under the military regime. Indeed, there are strong indications that there is a growing momentum with an increasing number of investigations being opened by prosecutors in Brazil.

And, the new Prosecutor General (*Procurador-Geral da República*), Rodrigo Janot (in office since September 2013), has publicly signalled a shift in the interpretation of the Amnesty Law. For example, in September 2013, responding to an extradition request for an Argentine former police office, Manuel Alfredo Montenegro, Janot argued that crimes against humanity (including crimes of torture) are not subject to statutes of limitations. On this view, military and police officers in Brazil who committed such crimes during the military regime (1964-1985) would not benefit from the Amnesty Law. Janot relied in his argument on Brazil's ratification of international human rights treaties, and held that the Brazilian Amnesty Law should also be subject to the human rights treaties ratified by Brazil.

The relative strength of this momentum towards criminal prosecution remains to be seen. But there are indeed signals that may, possibly, indicate a future circumvention of the Amnesty Law in order to pursue judicial accountability for crimes committed during the military regime. In other words, the most likely pathway to accountability, if any, would resemble the sChilean model rather than the Argentine (and Uruguayan) model of accountability.

IV. Brazil and the IAHRS: Beyond Transitional Justice

In conclusion, looking beyond the specific details of the *Gomes Lund* ruling and its implications for accountability for *past* human rights abuses, there are some broader implications that I would like to emphasise.

Three key points are particularly important to note.

First, the lack of compliance with *Gomes Lund* by the Brazilian state raises concerns that go beyond the absence of accountability for past human rights violations. Most clearly perhaps, the *Gomes Lund* case has highlighted some of the continuing tensions in Brazilian civil-military relations. True, the Brazilian military's long-held opposition to a Truth Commission eased somewhat since the Supreme Court upheld the interpretation of the country's 1979 Amnesty Law, which protects suspected torturers from facing trials. Yet, the military has broadly resisted calls for cooperation with the Commission, e.g. refusing to provide access to military archives. By implementing the Inter-American Court ruling therefore, the Brazilian government has the opportunity to further strengthen effective civilian control over military affairs.

Moreover, one of the most important aspects of *Gomes Lund* is the affirmation of victims' right to the access of information. The Brazilian government, the ruling stated, "is required to continue developing initiatives for the search, systematization, and publication of all information about the Araguaia guerrilla, along with information relating to human rights violations that occurred during the military regime, and guarantee access to this information." The *Gomes Lund* ruling appeared to feed into important legislative debates in Brazil that led to the entry into force of a new Access to Information Law.

In short, complying with *Gomes Lund* could strengthen the very crucial cluster of rights regarding state accountability, transparency, freedom of information, and the right to truth in Brazil. It would shift the responsibility to the state to provide public justifications to citizens why they should not have access to government deliberations and documentations. The connections here between the human rights of the past, present, and the future, seem, at least to me, quite apparent.

The second aspect of the *Gomes Lund* case concerns, more broadly, Brazil's relationship with the IAHRS, and compliance with international human rights by the Brazilian state more generally.

In its practice, the IAHRS has shifted from its focus on TJ-related human rights challenges towards dealing with issues related to structural and ongoing violence. Whether it is abuses committed by police and security forces or indigenous groups' rights to ancestral lands, the

IAHRS' emphasis on accountability, victims' rights, and reparations, builds on its decades-long engagement with transitional justice.[4]

These developments have already had significant implications for Brazil. As is well known, in the case of *Maria da Penha*, the Inter-American Commission applied the Convention of Belém do Pará for the first time when establishing the international responsibility of the Brazilian state for its negligence in the prosecution of domestic violence. The resulting so-called *Maria da Penha* law in Brazil is an important illustration of how the IAHRS can shape domestic legal and institutional reforms.

The Inter-American System has inserted itself into other human rights issues in Brazil as well, including in relation to conditions in prisons and detention facilities, conflicts over land and rights of indigenous communities, and of course, police violence.

With regards to violations committed by public security forces in Brazil, one key challenge with regards to implementation of the rulings of the Inter-American System is particularly acute. Brazilian federalism means that accountability for human rights violations remains dispersed, with the military police being controlled by state governors.

This has meant in practice, that while the federal government may have developed a more responsive human rights policy (including federalized jurisdiction over human rights crimes), it has not been matched by a parallel recognition at the sub-national level. Indeed Brazil has 'an extremely fragmented and heterogeneous polity which limits the central state's capacity to implement effective strategies'.[5]

There is a strong argument for why the Brazilian government needs to take the Inter-American Human Rights System seriously. In terms of concrete engagement with the IAHRS on specific cases, Brazilian state institutions have tended either to ignore judgements by the regional system or choose not to implement substantial measures. This has been the response by the Brazilian state to key elements of the *Gomes Lund* case as I have already highlighted.

[4] In other words, the IAHRS has gradually turned its attention towards human rights violations under formally democratic regimes in contemporary Latin America. The IAHRS has become increasingly ambitious both in terms of what human rights challenges it deals with and in terms of what it demands from states. In particular, the Inter-American Court's evolving policies of reparations now span from monetary compensation to victims, symbolic reparations (e.g. memorials), to demands for state reforms and criminal prosecutions of individual perpetrators.

[5] Panizza and Barahona de Brito, 1998: 21

And, the way the Brazilian government responded to the Inter-American Commission's interim measures in the case of *Belo Monte* has been particularly unfortunate – both for Brazil and for the Inter-American System itself. The Inter-American Commission adopted interim measures in April 2011 to request Brazil to halt the construction of the Belo Monte dam. The response by the government was very swift when it decided to suspend its annual contribution to the human rights body. At the time, it also withdrew the former Human Rights minister, Paulo Vannuchi's candidacy to become member of the Inter-American Commission. Since then, there has been a gradual return to the status quo by the Brazilian government, as reflected in the recent appointment of Paulo Vannuchi to the Inter-American Commission.

This brings me to my final point concerning the significance of Brazil's relationship with the IAHRS.

Simply put, the relationship with the Inter-American System matters because partly what it means for a so-called 'rising state' to engage internationally is to be able to accept external scrutiny, and respond to such scrutiny constructively.

For example, in the case of *Gomes Lund*, what we are talking about here is whether it was legitimate for the Brazilian state to disappear, torture and extra-judicially execute its citizens. These are of course events of the past, but it is up to the Brazilian state and society in the present to attempt to repair the harm done and, crucially, put in place preventive mechanisms and institutions that ensure that similar acts are not committed in the present.

Moreover, the Brazilian state's relationship with the Inter-American System matters, for many, in terms of what it reveals about the character of Brazil's leadership both regionally and globally. The absence of Brazilian regional leadership is particularly noteworthy in the area of transitional justice, as I alluded to earlier.

Beyond Latin America, it could be argued that the international dimensions of its human rights obligations are particularly important for Brazil. The Brazilian government has sought to play a more prominent international role in the areas of conflict prevention and resolution. And it seeks to insert itself as an international norm entrepreneur with regards to, for example, its notion of 'responsibility while protecting'.

The connections here between what the Brazilian government says and does at home, and what it says and does abroad, are significant. Indeed, many make explicit links between the Brazilian government's record and policies on international human rights *and* its potential for regional and global leadership.

For example, Viviana Krsticevic, the executive director of CEJIL (Center for Justice and International Law), one of the organizations that brought the *Gomes Lund* case to the Inter-American human rights system, makes an explicit link between the Brazilian government's lack of progress on transitional justice and its potential for regional leadership:

> "Latin America has advanced significantly in the resolution of crimes against humanity committed by dictatorial governments. Brazil, however, is still in debt with family members [of victims] and society when it comes to the establishment of truth and justice in relation to this topic. [The ruling by the Inter-American Court in the case of Gomes Lund] represents a unique opportunity for Brazil to show that it is capable of leadership both internationally as well as nationally with regards to human rights and democracy. For this reason, Brazil must overturn [*dejar sin efecto*] the aspects of the amnesty law that prevent justice to be done when confronted by crimes against humanity" (CEJIL 2010).

No matter what you think about the merits of such arguments, the important point here is that they are being made, and the expectations on Brazil that they highlight are likely to increase.

Thank you.