BRAZIL, (POST-)TRANSITIONAL JUSTICE, AND THE INTER-AMERICAN HUMAN RIGHTS SYSTEM

Dr Par Engstrom
Institute of the Americas, University College London
p.engstrom@ucl.ac.uk | http://parengstrom.wordpress.com

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I would like to thank the organisers – Tribunal de Justiça Estado do Tocantins, Universidade Federal do Tocantins (UFT), Escola Superior da Magistratura Tocantinense (ESMAT), for the very kind invitation. It is a pleasure to be here. I very much look forward to the discussions as many of the themes that I would like to cover involve issues on which you are the real experts.

My remarks will be on the Inter-American Human Rights System; and its relevance for human rights protection here in Brazil. The focus of my talk is not primarily legal or jurisprudential. Rather I would like to locate the Inter-American System in its relevant political context and to try to understand the various ways in which the System matters.

My talk today is particularly concerned with current processes of post-transitional justice in Brazil. By this I mean the "prospects for the revision of [the] transition-era human rights settlement"[1] in Brazil.

More specifically, 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 response to it, tell us about the prospects for and limitations on Brazilian post-transitional justice, and arguably, Brazilian democracy more broadly.

THE IAHRS & TRANSITIONAL JUSTICE

Let me start with a few general remarks on the Inter-American Human Rights System (IAHRS), and its approach to transitional justice. In terms of its historical development, 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 Inter-American System has played a central role in the construction of a set of rules, norms and principles of transitional justice. Nowhere is this more apparent than in relation to its increasingly robust position on the legitimacy of amnesty laws. 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.

[1] Borrowed from Cath Collins.

The *Barrios Altos* case, together with subsequent cases related to amnesty provisions in Chile, Uruguay, and, of course Brazil, have 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".

Over time, therefore, 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 regarding past violations 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.

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 and 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).

It should be noted, however, 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

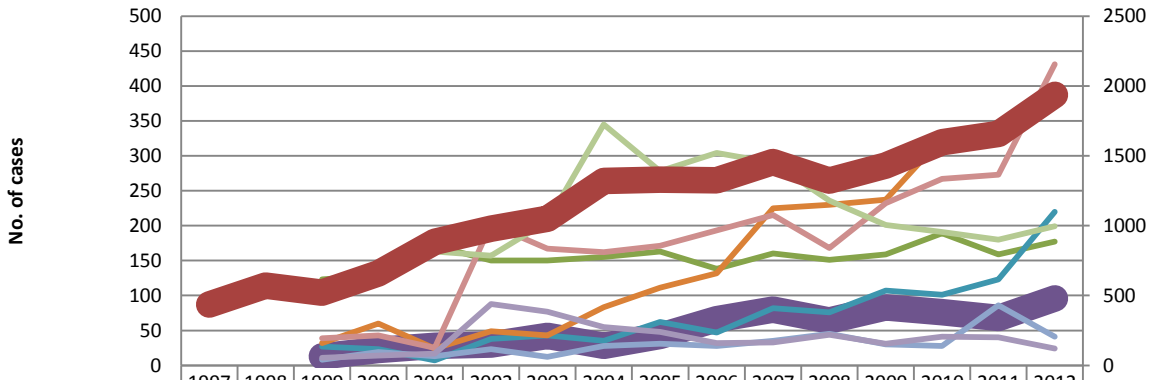
obstructionist to a more cooperative relationship with the IAHRS reaching a number of friendly settlement agreements with the Inter-American Commission. Moreover, Brazil supported the candidacies of Antônio Cançado Trindade to the Inter-American Court of Human Rights (serving as judge on the Court from 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.

Yet, 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.

2. Human Rights Mobilisation

The second dimension in evaluating the relationship between Brazil and the IAHRS is to consider how Brazilian 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.

GRAPH 1: IACHR Petitions (1997-2012)



	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. As you know, 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, including here in Brazil.

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 (some) legal debate still. For example, the Brazilian Federal Supreme Tribunal (STF) has taken a relatively restrictive view on the status of international human rights treaties within the Brazilian constitution.

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."[2] From a regional and comparative perspective hence, Argentina is exceptionally open to international human rights law.

In the case of Brazil, the 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, for several reasons, 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-transitional justice developments in Brazil more specifically.

BRAZIL, (POST-) 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. For example, 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 significant momentum to date.

There are several factors that are often highlighted to explain Brazil's perceived transitional justice exceptionalism in regional terms. The balance of power during transition meant that the military was very much in charge of the terms of the transition to civilian rule. 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 was characterised by a highly legalistic military rule. There are 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. Also, as pointed out by Anthony Pereira, the Brazilian political system is not conducive to transitional justice policies. 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

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

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, the role of international pressures and incentives, 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? I assume that many of you are familiar with the *Gomes Lund* case. But, in brief, 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. 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,[3] 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. 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.[4] 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.

[3] 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)

[4] 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.

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*

Now, 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. 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 Federal 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.

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, it might be difficult 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 important. The creation of the Truth Commission is a significant advance and is seen by many as a crucial step towards accountability for past human rights violations.

The design of the Truth Commission was criticised however. Many have pointed out that the mandate of the Commission was limited. Although its original mandate has been extended, the time period to complete its work was limited, and the period covered with particular focus – 1964 to 1985 – was extensive. The Commission had the power to call witnesses to investigate abuses committed both by the military and by guerrillas. But, it had no prosecutorial powers. And, in line with the Amnesty Law, it had no powers to investigate or condemn suspects.

On the other hand, for many any official transitional justice initiative is better than none. 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.

The Commission's report, published in December 2014, is based on nearly 1,000 testimonies and numerous public hearings. The report documents the systematic policy of violations by the military regime, with extensive accounts of extrajudicial executions, arbitrary detentions, torture, sexual assaults and enforced disappearances. The report addresses, in its recommendations, the circumvention of the Amnesty Law (recommendation #2), but stops short of an explicit call for the repeal of the Law. The report does, however, reiterate the jurisprudence of the Inter-American Court of Human Rights in an implicit critique of the decision of the Supreme Federal Tribunal to uphold the Amnesty Law.

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

We can only speculate of course as to what future TJ trajectories in Brazil may look like. It may appear 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. The 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.[5] He has also repeatedly called on the Supreme Federal Tribunal to revise their interpretation of the Amnesty Law.

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

[5] 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.

most likely pathway to accountability, if any, would resemble the Chilean model rather than the Argentine (and Uruguayan) model of accountability.

BEYOND TRANSITIONAL JUSTICE

In closing, looking beyond the specifics of the *Gomes Lund* ruling, what are some of its broader implications? And what does the Brazilian government's response tell us about the prospects for and limitations on Brazilian post-transitional justice, and, I would add, Brazilian democracy? These questions bring me to the final area that I would like to highlight, which is the **question of accountability** in Brazil's transitional justice trajectory. There are at least two overlapping, yet distinct, dimensions of accountability – past and present, domestic and international – that I think are important for us to consider.

1. Time: Past and Present

First, the ways in which any society deals with its past, present, *and* future tend to be intimately linked. It is precisely in this sense that transitional justice for the Brazilian government, and Brazilian society more broadly, is not exclusively about the past, or a form of backward-looking accountability. Rather, it is very much about the present and crucially directed towards the future. It raises issues of accountability of government towards its citizens and the limits on legitimate state violence.

Simply put, what we are talking about 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 government in the present to attempt to repair the harm done and, crucially, put in place preventive mechanisms and institutions that ensures that similar acts are not committed in the present and in the future.

These linkages between the past and present could be illustrated in several ways, but let me briefly discuss three areas:

A. Continuing human rights accountability deficits

First, the connections between past and present **accountability deficits** are particularly apparent in the **area of public security**. Repression and lack of accountability continues to be the hallmark of the security forces. Indeed, one of the main conclusions in the report of the National Truth Commission is precisely this continuity of violations despite the significant political changes that Brazil has undergone since transition. The character of Brazilian federalism means that accountability for human rights violations remains dispersed, with the military police, for example, being controlled by state governors. This has meant in practice, that while the federal government may have developed a more responsive human rights policy, it has not been matched by a parallel recognition at the sub-national level.

But, beyond the lack of accountability for violations committed by individual police officers and commanders, there is a broader political accountability gap here concerning political authorities and elites. Political and economic elites have for decades supported and legitimated repressive policing in ways that have undercut most attempts to reform the security forces.

B. Military accountability

Second, 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.

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.

C. Governmental accountability: right to information

This is also related to my third point. 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 appears to have fed into important legislative debates in Brazil that led to the entry into force of a new Access to Information Law in May 2012.

In particular, 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 for why files should remain classified.

The connections here between the human rights of the past, present, and the future, seem, at least to me, quite apparent.

2. Space: Domestic and International

This brings me to the interlinkages between domestic and international dimensions of accountability, and in particular the broader relationship between ***Brazil and the Inter-American Human Rights System***, and compliance with international human rights by the Brazilian state more generally. Put simply, there is a strong argument for why the Brazilian government needs to take the Inter-American Human Rights System seriously, in the *Gomes Lund* case, but also in other cases.

In relation to *Gomes Lund*, the Brazilian government's response was initially fairly forthcoming as I mentioned earlier. However, when it comes to the implementation of key elements of the *Gomes Lund* ruling, Brazilian state institutions have chosen not to implement substantial measures to date.

Moreover, the way the Brazilian government responded to the Inter-American Commission's interim measures in the case of Belo Monte was also damaging – 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. It also withdrew the former Human Rights minister, Paulo Vannuchi's candidacy to become member of the Inter-American Commission.

Now, does this matter? Well, the relationship with the Inter-American System matters because partly what it means for a 'rising state' to engage internationally is to be able to accept external scrutiny, and respond to such scrutiny constructively and responsibly. In particular, the Brazilian government's response to *Gomes Lund* 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. In many ways, Brazil is behind the regional curve when it comes to transitional justice.

Beyond Latin America, it could be argued that the international dimensions of its human rights obligations are particularly important for Brazil. The Brazilian government seeks 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 lack of progress on transitional justice – and its support for international human rights more generally - *and* its potential for regional and global leadership. 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 only likely to increase.

It is with this idea that I thank you for the very kind invitation, and for your attention. I do hope that some of what I have said will have triggered questions and comments.

Thank you.