



FOREIGN AFFAIRS

Nothing but the Truth

Brazil's Truth Commission Looks Back

BY KATHRYN SIKKINK AND BRIDGET MARCHESI **February 26, 2015**

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Some four decades ago, Brazil's military government, which ruled from 1964 to 1985, arrested a 22-year-old Marxist guerilla named Dilma Rousseff. Over the course of nearly three years in captivity, she was subjected to electric shocks, beaten, and suspended from a rod bound to her hands and feet.

Rousseff, of course, became Brazil's president in 2011, following Luiz Inácio Lula da Silva and Fernando Henrique Cardoso, who were also jailed during the same period for their dissent. But she rarely spoke publicly of her imprisonment. And thanks to a 1979 amnesty law, originally designed to protect dissidents in exile, many of those responsible moved on without fear of prosecution.

In December 2014, Brazil's National Truth Commission, or Comissão Nacional da Verdade, challenged this state of affairs by completing what may

be Latin America's last major investigation into human rights abuses during the twentieth century. Announcing the release of the commission's report in Brasilia, which recommended a repeal of the amnesty law and the prosecution of those culprits still living, Rouseff held back **tears**.

Many observers have noted that the commission, which the Brazilian legislature created in 2011, was remarkable mostly for its lateness, especially in a region that pioneered the use of truth commissions, establishing a total of 18, or 42 percent of all transitional truth commissions globally between 1972 and 2012. Argentina and Bolivia, for example, concluded truth processes in the early 1980s, soon after human rights violators lost power. And Brazil's commission was late by global standards, too: It was the world's 43rd since 1972, coming years after inquiries into abuses committed in such countries as, South Africa, Sierra Leone, and Peru.

In this context, Brazil, which launched its commission some 50 years after the start of the military regime, is indeed an outlier. Yet its truth commission stands out in another way: its quality. In terms of its thoroughness, its willingness to name names, and its call for prosecutions, the commission has done exemplary work. Whether its findings will lead to justice for the victims, however, remains an open question.

JUST THE FACTS

Although the Brazilian legislature tasked the commission with documenting human rights violations between 1946 and 1988, its investigators focused on the crimes committed after military rule began in 1964. In the end, the commission confirmed that the Brazilian state was responsible for at least 191 deaths and 210 disappearances during that period. (It also located the remains of 33 people who had previously been classified as missing.) As the report notes, these numbers are almost certainly lower than the actual total,

in part because the commission lacked access to the records of the country's armed forces, which claimed that the relevant material had been destroyed.

The legislators who created the commission had expected its work to stop there. The commission had no legal mandate, and it was required to observe the 1979 amnesty law. Instead, the body pushed back in its final report, recommending criminal, civil, and administrative trials for those responsible for violations it characterized as crimes against humanity authorized at the highest levels. During military rule, the report concluded, the “elimination of the political opposition became state policy, conceived of and implemented as a result of decisions coming from the Presidency and military ministers.” And under international law, it reasoned, such crimes were not subject to amnesty or statutes of limitations.

Prosecutors have frequently used this sort of legal reasoning in Latin America. In Argentina, for instance, the courts determined that the country's amnesty laws were contrary to international law and that cases involving large-scale disappearances were not subject to statutes of limitations, permitting human rights prosecutions to move ahead. But lawyers have never managed to do so in Brazil, where the country's amnesty law has held strong.

The report also recommended that the state make symbolic reparations and demonstrate its commitment to preventing torture in the future. It suggests prohibiting public commemorations of the 1964 military coup, for example, which clubs of retired military officers are known to carry out, and that the armed forces and police should emphasize democratic values in their hiring and training. It also urges the state to take preventive measures—such as state-level committees to investigate any future allegations of torture, for

example—and to provide better medical and psychological services for victims.

TRUE ACCOUNTING

Timing aside, how does Brazil's truth commission stack up against its peers? Based on data from the Transitional Justice Research Collaborative, we have found that there are important differences in quality among truth commissions. The most effective, or those most likely to result in a government more respectful toward human rights, are ones that are public, inclusive, and autonomous. They also tend to share seven key characteristics: they take testimony, make testimonies publicly available, encourage wide participation, issue a final report, make the report publicly available, publish the names of perpetrators, and call for prosecutions.

Taking each of these characteristics into account, we ranked every truth commission that took place between 1972 and 2014. Although the composite score doesn't capture all elements of quality, it provides a useful means of comparison. For the 43 transitional truth commissions we examined, the average yearly quality score was 3.18 out of 7.

When one also considers when truth commissions were launched, two important trends come into view. The first is somewhat expected: The number of truth commissions has steadily increased since the mid-1990s. The second trend is more surprising: The quality of truth commissions has declined over time. Since the conclusion of South Africa's Truth and Reconciliation Commission, the quality of truth commissions has dropped 20 percent, from 3.7 to 2.9, and remained at that level for much of the past decade. The trend suggests that as transitional justice has become a more common route to post-transition legitimacy, some leaders may have concluded that they can secure benefits—often in the form of greater

legitimacy—from forming truth commissions, without implementing meaningful reforms that threaten those in power. This was the case in the Democratic Republic of the Congo, for example, which established a truth commission as part of a 2002 peace deal, but failed to produce a public report or release testimonies.

Brazil, by contrast, scored a six on the seven-point scale. Waiting did have an advantage: Because Brazil's truth commission was formed so late, it was able to draw on previous investigations, such as a well-known nongovernmental report from 1985, *Brasil: Nunca Mais*, and a governmental report, *Direito à Memória e à Verdade*, published in 2007. Building on those studies, the commission produced a three-volume report totaling over 4,000 pages, which extensively documented individual cases. The findings are available on a user-friendly website, alongside other information about the commission's composition and mandate. The report names 377 perpetrators, 191 of whom are still alive, and makes a compelling case for prosecuting them.

Only two truth commissions have achieved a perfect score on our scale, and seven, including Brazil's, have earned a six. (Over 50 percent of those processes took place in Latin America, where the truth commissions are of higher quality than those in any other region.) A more complete evaluation of Brazil's commission, however, will have to wait until the government has a chance to implement its recommendations. Brazil's public prosecutor's office, in particular, has been attempting to open criminal and civil prosecutions over many years, but judges, invoking the amnesty law, have repeatedly frustrated their efforts. The key test of the truth commission's impact, then, is whether it can provide not only public acknowledgement to victims and a record for collective memory, but also spur the Brazilian state to hold offenders accountable. Yet virtually every other country in the region has either overturned or circumvented its amnesty laws in order for prosecutions

to proceed—making it hard to believe that Brazil won't ultimately follow suit.

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