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Brazil established its first truth commission in November 2011, which seeks to uncover the human rights abuses committed during the military dictatorship from 1964 to 1985. Although no international treaty or convention explicitly recognizes the right to truth, regional precedent suggests that it is a human rights norm. The Truth Commission faces the following barriers: the Amnesty Law protects perpetrators of human rights violations on either side of the conflict, tensions exist between the Brazilian Supreme Court and the regional human rights court, and politically strong military officials still present in the Brazilian government actively block the Truth Commission's access to information. This paper reviews academic work on truth commissions and the right to truth, compares the events leading up to the Truth Commissions in Brazil and Argentina, and explore the hurdles to information in order to answer, does Brazil have the right to truth?

1. Introduction

In November 2011, Brazilian President Dilma Rousseff signed Law Nº 12.528, establishing the country's first truth commission. The Truth Commission will analyze the human rights abuses committed during the military dictatorship from 1964 to 1985, abuses that included kidnapping, torture, homicide, and the concealment of these crimes. The Truth Commission, however, is facing a series of setbacks in uncovering what happened. First of all, the Amnesty Law protects perpetrators of human rights violations on either side of the conflict. Second, there are inconsistencies in the legality of the Amnesty Law according to the Brazilian Supreme Court and the Inter-American Court on Human Rights (IACHR). The Supreme Court of Brazil ruled that the Amnesty Law was constitutional and a political question that could be repealed only in Parliament, while the IACHR condemned the Amnesty Law as inconsistent with the American Convention of Human Rights. Third, the politically strong military officials still present in the Brazilian government actively block the Truth Commission's access to information. This raises the question: does Brazil have the right to truth?

Although the right to truth isn't an explicitly recognized universal human right under treaties or conventions, it is an emerging concept and legal process that Brazil adopted due to internal demand and pressure from peer countries and international mandates. As Brazil tries to follow regional precedent by instituting a truth commission, it needs to consider the experiences of its neighbors, such as Argentina, in navigating the intersections of national and regional laws, as well as emerging universal human rights concepts.

Section 2 of this paper will present a comprehensive review of academic work on truth commissions and the right to truth – from general legal justifications for establishing truth commissions, to discussions of whether or not there is a Right to Truth. Section 3 of this paper will discuss the pertinent aspects of the historical background leading up to the Truth

Commission in Brazil, including a recount of the military dictatorship, as well as explanations of the Amnesty Law, the Supreme Court ruling on the Law, and the dissent from the Inter-American Human Rights Commission. Section 4 will discuss the current state of the Truth Commission, present the goal of this paper, and illuminate the barriers and obstacles facing the Truth Commission. Section 5 illustrates jurisdictional issues between domestic laws and international treaties. In Section 6, I compare the experience of the Truth Commission in Brazil with the Truth Commission in Argentina, and discuss lessons that can be taken away from the comparison of the two cases. Section 7 focuses on possible actions Brazil can take to address the obstacles facing the Truth Commission, followed by the implications and impacts of these solutions. Finally, Section 8 seeks to answer: does Brazil have the right to truth?

2. Literature Review: The Right to Truth

The "right to truth" is an emerging concept in international human rights law, but it is by no means enforced equally across nations (EAAF 2002). The body of literature on the explicit right to truth is limited because although it is a developing principle of human rights, there is no official universal right to truth in regional or international conventions. Scholars, countries, and courts have justified enacting laws for truth commissions through articles of domestic constitutions, as well as using provisions of regional and international treaties.

The Equipo Argentino de Antropoligía Forense (EAAF) describes the right to truth as central to the project of confronting transitions to democracy by addressing the legacy of massive human rights violations. The right to truth is implicit in international law and a part of the right to justice, which entitles the families of disappeared persons to know the fate of their relatives and imposes an obligation of investigation on states (EAAF 2002). The right to truth is distinct from a normal penal process, however, in that it requires the state to investigate crimes but does not actually apply penal law and punish the perpetrators of the crime.

The National Commission on the Disappearance of Persons (CONADEP) in Argentina framed the right to truth as the obligation of the state to publicize the fate of disappeared persons (Cuevas 2002). The Araguaia Guerrilla case in Brazil portrayed a new dimension of the right to the truth that shed light on 'truth' in terms of freedom of information – not only as an individual right of the victims, but also as a collective right of society (Melo 2012).

The truth commission is one way that the conceptual right to truth has materialized. South Africa, Sri Lanka, Argentina, Chile, Peru, Uruguay and other countries have encouraged the emergence of truth commissions as one way through which countries attempt to come to terms with the past, by investigating large-scale human rights violations and incentivizing perpetrators to come forward and tell what really happened. The American Convention on Human Rights (IACHR) protects the right to life, the right to humane treatment, and the right to personal liberty, which were avenues of reasoning used by Argentina, Peru, and Chile in order to legally establish their respective truth commissions (Filho 2012).

Truth commissions have (1) provided victims with psychological support as well as monetary reparation for crimes committed against them, (2) upheld the right of victims' families to know about the violence perpetrated against their kin, and (3) publicly acknowledged the victims' version of events. Truth commissions were especially beneficial for the civil society at large by (4) pointing out the institutional failures that might have contributed to the gross violations of human rights, (5) making recommendations to preclude these violations from occurring again, (6) fostering a spirit of human rights, and (7) reinforcing the importance of transparent governmental institutions (Filho 2012).

The annual International Day for the Right to Truth on March 24, established by the UN General Assembly, is another embodiment of the right to truth. On this day, countries recognize the victims of atrocities, their right to know the fate of their family members, and to know who committed the crime (ICTJ 2012).

Although the idea of the right to truth exists, there are numerous obstacles to fully realizing this right. The right to truth is often conflated with, or difficult to distinguish from, the rights to justice and reconciliation. Many argue that reconciliation provides the basis for amnesty law, and is the "code word for those who want nothing done" (EAAF 2002, 131). One example of this is amnesty laws. In Brazil, for example, the Amnesty Law of 1979 grants "total and unrestricted amnesty" to all individuals involved in politically motivated crimes during the dictatorship, including torture, kidnapping, and homicide (Filho 2012), and prohibits the prosecution of perpetrators both from the state forces and the armed resistance.

This obstacle is exacerbated by inconsistencies between domestic law and the rulings of regional/international courts. Discrepancies exist in Brazil between the Supreme Court and Inter-American Court of Human Rights (IACHR), as well as disagreement about the application of the Amnesty Law within Brazil (Cabral 2012). In April 2010, the Brazilian Supreme Court upheld the constitutionality of the 1979 Amnesty Law. However, in December 2010, for the second time the IACHR found that provisions of the Amnesty Law were incompatible with the American Convention, and therefore unconstitutional (Filho 2012). As a result, it ordered the Brazilian government to investigate the killing, torture, and disappearance of people during military operations to eliminate resistance to the dictatorship – without having the actual jurisdiction to do so.

This is one example of the push to include the right to truth in regional/international conventions. Stances on the IACHR's ruling vary; some believe that the Brazilian law is final, some claim that the IACHR is mightier, while other leaders view the IACHR as a proxy for US imperialism and a biased judicial body exceeding its jurisdiction (Picq 2012). It has had to investigate matters presidents would rather keep secret, and there is evidence that countries change their opinion on the IACHR depending on whether their stances on certain issues align. For example, President Rousseff's administration strongly supported the IACHR ruling about the Amnesty Law, invoking its authority and proclaiming the invaluable partnership. However, Rousseff heavily criticized the court's ruling concerning the construction of the Belo Monte dam, and broke relations with the IACHR (Hayman 2011).

According to human rights scholars and practitioners, as well as journalists covering the truth commission proceedings, the right to truth is at a stand still. In Brazil, the Supreme Court of Brazil has ruled the Amnesty Law constitutional, but the president and the regional human rights authority denounce the Amnesty Law and demand a fair and effective truth commission. In order to determine whether Brazil has the right to truth, I will discuss the history of the Truth Commission in Brazil, navigate questions of jurisdiction between domestic laws, those of the IACHR, and international human rights law, and look at the precedents set by Brazil's regional neighbors – namely Argentina – to determine whether truth commissions are becoming the norm.

3. History of the Truth Commission in Brazil

This section focuses on historical events and laws that lead to the current state of the Truth Commission in Brazil. Beginning with the coup d'état that established the military dictatorship in Brazil, this historical recount will tell of the ensuing governments that reduced

civil liberties, discuss the enactment of the 1979 Amnesty Law, and present the domestic and regional tensions surrounding that law.

3.1 The Military Dictatorship in Brazil

President João Goulart came into office during a time of constitutional crisis[1]. As the left-wing Vice President of Brazil, Goulart succeeded President Janio Quadros following Quadros' resignation just a few months after his election in 1960. Due to fears of Goulart's alignment with the Communist Party, the [Castelo Branco] military staged a coup d'état in 1964, deposing President Goulart and setting up a military dictatorship in Brazil – the first in the region (Monteconrado et al 2010). To suppress the threat of communist uprising in Brazil, the United States supported the coup and overthrow of Goulart both strategically and financially (Globo 2006).

The Castelo Branco government presented itself as the defender of legality and in opposition to communism. The government legitimized its military rule through revolutionary rhetoric, and institutionalized it through a series of constitutional acts (Monteconrado et al 2010). General Costa e Silva, who became president following the coup in 1967, led a government that reduced civil liberties, increased media censorship, and faced violent opposition from left wing groups (Monteconrado et al 2010). General Ernesto Geisel became president in 1974 and introduced reforms that further limited political activity and elections (BBC 2012). It is during these periods that the regime became openly dictatorial.

In between 1964 and 1985, the government acted against those under suspicion of being affiliated with communist activities and those who violently opposed the military rule. Such repression took the forms of political arrests, torture against those in state custody, forced disappearances, summary executions, and hiding of corpses. The military also silenced and overpowered leftist, peasant, and labor movements, establishing control over popular movements and consequently weakening opposition (Mainwaring 1986). It is important to note that the military government justified its actions through a guise of protecting "national security" from "enemies of the state" (Filho 2012) – for the interpretation of this language comes into play when categorizing these atrocities as acts of war versus violations of human rights.

3.2 Brazil's Transition to Democracy and the Amnesty Law

Brazil began a slow transition into democracy in 1974, under the leadership of President Ernesto Geisel. The military regime instituted this deliberate, gradual, and careful process of political liberalization – also known as "abertura" – because they did not see military rule as a stable and permanent solution, and saw the need to proceed along the Western values of democracy (Mainwaring 1986). The regime opted to liberalize not because of its weaknesses, but rather because of its economic and institutional strengths, and muscle over the opposition. The regime initiated the transition to democracy for several reasons, an important one being the need to unite the increasingly politicized institution of the military (Mainwaring 1986). The era of the military regime brought economic growth and prosperity to Brazil, which created a paradoxical complex: the parties that had opposed Goulart were the ones that benefitted most from the

[1] Goulart was on an official trip to China at the time of Quadros' resignation. The possibility of succession by Goulart provoked the more conservative section of Congress to react, especially the military because they considered him a populist politician who intended to include the communists in the alliance. The three military ministers vetoed his return. But, with civil war imminent, Goulart was inaugurated in a parliamentary system of government with diminished powers (Monteconrado et al 2010).

economic growth, and were now the ones pushing for democratic and direct elections (Mainwaring 1986). The military regime had kept several democratic institutions during the dictatorship – such as political parties, elections, and a constitution – which proved to be an important space of which the opposition to the military regime took advantage, and allowed some continuity during the transition (Mainwaring 1986).

Every step during abertura provided new possibilities for the opposition and new limits for the military regime. Popular movements began to gain momentum into the mid and late 1970s, and emerged stronger than ever, leading the military regime to take some precautionary measures. The Amnesty Law of 1979 (Law Nº 6.683/1979) was signed into law during the transition to democracy as a deliberate move to protect military actors during and after the dictatorship. It gives total and unrestricted exoneration to all individuals involved in politically motivated crimes committed between September 2, 1961 and August 15, 1979, including torture, kidnapping, and homicide (Monteconrado et al 2010, Filho 2012). Although the law prohibits the prosecution of perpetrators from both the state forces and the armed resistance, it disproportionately benefits state agents who committed torture, homicide, and kidnappings by giving them a jail out of free card. However, the law *did* remove the criminal status of former "enemies of the state," and became decisive in the non-application of punitive measures against such agents, allowing them to reintegrate into society (Monteconrado et al 2010).

Due to the military government's instrumental position in the transition, its "success" in restoring peace and order, and the boom in the economy brought by the regime, many military government officials gained legitimacy and stayed in power as members of congress or Brazilian municipality governments (Mainwaring 1986). Following the end of the military dictatorship in 1985, José Sarney became president. In 1995, Brazil adopted Law Nº 9140/95, which recognized the state's liability for deaths and disappearances during the military regime (Melo 2012). It did not, however, repeal the Amnesty Law.

3.3 Supreme Court Ruling on the Amnesty Law

The left-wing group in Brazil – with a democratic government, the new 1988 Constitution, and a more informed civil society – escalated their open opposition to the Amnesty Law's legality. With the support of human rights groups and the administration of President Luiz Inácio Lula da Silva (also known as Lula), the Brazilian Order of Lawyers (OAB) took the case to the Brazilian Supreme Court in an effort to invalidate the law as incompatible with the 1988 Constitution. The OAB argued that, "The supreme court understood that the Amnesty Law pardoned torturers, which in our view is regressive in relation to fundamental rights in the Constitution and international conventions, which clearly indicate that torture is not a political crime, but a common crime against humanity and, therefore, does not expire" (LAWR 2010, p.9).

Under Direct Action of Unconstitutionality – an instrument that allows the Supreme Federal Court of Brazil to judge the constitutionality of acts passed by the National Congress – the Supreme Court reviewed the Amnesty Law, but military government lawyers argued that it could not be changed retroactively because it was an "integral part of the country's reconciliation process" (LAWR 2010, p.9). In April 2010, the Supreme Court agreed with this sentiment, stating that torture was not a political crime, but did fall into the "related crime" category, and emphasized that it was not within the Court's jurisdiction to alter the law (LAWR 2010).

To make matters more complicated, current president Dilma Rousseff herself was a victim of torture during the military regime, and very openly opposes the Amnesty Law and

supports the Truth Commission in Brazil (Cabral 2012). Although the Supreme Court of Brazil upheld the law, Rousseff challenges the legality of the ruling by siding with regional and international commissions and conventions that condemn the Amnesty Law (MercoPress 2011). This gives an unusual amount of legitimacy to these regional and international institutions, and brings tensions between domestic and regional/international laws to the forefront.

3.4 The Inter-American Court on Human Rights Case

From 1982 to the late 1990's, seventy relatives of kidnapped victims filed reports of disappearances to the Inter-American Court on Human Rights (IACHR). The IACHR took the case in 2001, under allegations that Brazil had broken the American Convention on Human Rights by using the Amnesty Law as a ploy to not punish human rights violators of the military regime (IACHR 2001). More specifically, they claimed violations of rights guaranteed under Article I (right to life, liberty, and personal security); Article XXV (right of protection from arbitrary arrest); and Article XXVI (right to due process of law) of the American Declaration of the Rights and Duties of Man, and of Article 4 (Right to Life); Article 8 (Right to a Fair Trial); Article 12 (Freedom of Conscience and Religion); Article 13 (Freedom of Thought and Expression); and Article 25 (Right to Judicial Protection), as well as Article 1(1) (Obligation to Respect Rights) of the American Convention on Human Rights (IACHR 2001).

In 1996, Brazil tried to mitigate these allegations by establishing *o Commissão de Familiares de Mortos e Desaparecidos Políticos* – or the Commission for the Family Members of the Persons Killed or Disappeared for Political Reasons – which was created to investigate the crimes committed during the dictatorship and to grant reparations to families who could prove they were victims of violence (Filho 2012). In 2007, the commission, which relied exclusively on testimonies provided by the victims, published the report *The Right to Memory and to Truth*, accusing "federal agents of rape, torture, executing prisoners, and concealing bodies of victims," and noting that "opponents of the regime resorted to bank robberies, kidnappings of foreign diplomats and attacks on military bases, which it says produced countless victims" (Duffy 2007 as cited in Filho 2012). According to this report, more than 400 people were killed and more than 160 people are believed to have disappeared during the military dictatorship – smaller than those of Argentina and other neighbors, but still significant numbers (CFMDP 2007).

Brazil paid reparations for the violations to the victims' families, but in enacting Law Nº 9140 in 1995, it was also held responsible for investigating the circumstances and places of the deaths. Brazil responded that it was only possible to locate the bodies and investigate the circumstances of the guerrillas' deaths if evidence was available to investigate, but claimed it lacked such evidence. Brazil asserted that it did not have complete military reports containing the burial sites of these individuals or the circumstances in which they died, and believed that the Commission should order the file closed (IACHR 2001).

In 2001, the IACHR ordered the government to investigate "the killing, torture and disappearance of 70 people, including farmers and members of the Communist Party of Brazil, during military operations to crush resistance to the dictatorship in the early 1970s" (Filho 2012). After the 2010 Supreme Court ruling that upheld the law came an outpour of criticism from human rights and criminal justice organizations once again – especially from the United Nations (UN) and the IACHR – both of which Brazil is a member. The IACHR issued a landmark ruling in 2010 denying the legality of the Amnesty law, and expressing once again that maintaining the Amnesty Law goes against what it believes is the legal direction the continent should be taking.

In doing so, it hoped to force Brazil to review the Amnesty Law, or reconsider its allegiance to international accords to which it is a signatory (LAWR 2010).

Although the IACHR increased domestic and international awareness by opposing Brazil's Amnesty Law, it by no means had or has jurisdiction over reversing the Supreme Court decision. It is also noteworthy that there were judges on the court representing Peru, Argentina, Uruguay, and Chile – all countries that had repealed their amnesty laws and/or underwent human rights investigations or truth commissions.

4. The Truth Commission

After the Supreme Court upheld the Amnesty Law, pressure mounted to create alternative measures of overcoming the violent past in Brazil. Two special commissions carried out this important work – the Dead and Missing Persons Commission (discussed above) and the Truth Commission. As mentioned in the background section, current Brazilian President Dilma Rousseff herself was a member of the Communist party and a victim of torture during the military dictatorship. Her presidency, as well as Lula's, has been marked with stronger pushes to investigate human rights abuses during the dictatorship, specifically through the Truth Commission.

Many former and current military officials and chiefs openly opposed the proposed truth commission because they saw it as the government's attempt to get around the Amnesty Law (Duffy 2010). Rousseff's commitment to also investigate the armed-resistance side of the conflict eased military opposition, however, and in November 2011 Rousseff signed Law Nº 12.528, which established the country's first truth commission. The Commission, which began work in June of 2012, is composed of seven, presidentially-elected commissioners, all of whom are Brazilian nationals, and have been recognized as competent and ethical in their work and conduct. They are also known to have promoted democracy, constitutional institutions, and the respect for human rights (Ghione 2012). Fourteen staffers accompany the seven commissioners in investigating the human rights abuses that occurred from 1943 to 1985 (42 years), with only two years to do so. Brazil's Truth Commission faces both scarce time and human capacity are; for reference, the commissions of Argentina and Chile employed at least 60 staffers and covered a significantly smaller window of time. (Ghione 2012).

Due to the Amnesty Law, the findings of the Commission will not produce any legal consequences or public hearings, and those responsible for violations are discouraged from coming forward and providing information. Although the Brazilian military started releasing documents from the military regime in 2005, only documents dated before 1975 were released[2], with significant restrictions, including omissions of the names of third parties[3] (Rohter 2005). To make matters more difficult, military documents have been difficult to obtain because of the military's powerful presence in all branches of the Brazilian government. Even Rousseff admitted it would be highly naïve to believe that any released documents would name those responsible for the jailing, torture, and killing of political prisoners (Rohter 2005).

Even with the IACHR's ruling and the creation of the Truth Commission, the Amnesty Law and the military's limited willingness to contribute have created significant obstacles in obtaining the truth about the military dictatorship in Brazil. For this reason, I ask, does Brazil have the right to truth? The following sections will review the literature about truth commissions

[2] Post-1975 records will not be released for another 23 years, according to Rohter (2005).

[3] Third parties refer to the individuals who are not directly related to the people seeking the documents.

and the right to truth, compare the Brazilian situation to the process in Argentina, and offer insights on the right to truth.

5. Regional/International Treaty Obligations

In this section, I will explore Brazil's regional and international obligations in order to resolve questions of jurisdiction regarding truth commissions and the Amnesty Law, specifically looking at when Brazil ratified each convention, and which measures the treaty possesses that relate to the right to truth or address truth commissions. According to Geneva Academy (2012), Brazil is party to all major humanitarian and human rights treaties without any reservations. The table below lists the commitments specific to the military dictatorship and the right to truth.

Table 1: Brazil's Regional and International Treaty Obligations

Treaty	**Main Points**	**Accession[4] or Ratification[5]**
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UN)	Article VII (against torture); Article XIV (equal before the courts)	Sept 28, 1989
International Covenant on Civil and Political Rights (UN)	Article XV (cant prosecute something that wasn't illegal under domestic law, can't prevent from prosecuting something that was illegal under law during time)	Jan 24, 1992
American Declaration of the Rights and Duties of Man (OAS)	Article I (right to life, liberty, and personal security); Article XXV (right of protection from arbitrary arrest); and Article XXVI (right to due process of law)	April 1948
American Convention on Human Rights (IACHR)	Article I (Obligation to Respect Rights); Article IV (right to life); Article VIII (right to a fair trial); Article XII (freedom of conscience and religion); Article XIII (freedom of thought and expression); and Article	August 1997

[4] Accession is the act whereby a state accepts the offer or the opportunity to become a party to a treaty already negotiated and signed by other states. It has the same legal effect as ratification. Accession usually occurs after the treaty has entered into force (Oxford 1990).

[5] Ratification is an act by which a State signifies an agreement to be legally bound by the terms of a particular treaty. To ratify a treaty, the State first signs it and then fulfills its own national legislative requirements. Once the appropriate national organ of the country – Parliament, Senate, the Crown, Head of State or Government, or a combination of these – follows domestic constitutional procedures and makes a formal decision to be a party to the treaty (Oxford 1990).

	XXV (right to judicial protection)	

Source: http://www1.umn.edu/humanrts/research/ratification-brazil.html

As demonstrated above, all of the international and regional treaties pertaining to the military dictatorship and right to truth were signed after the 1979 Amnesty Law, except for the American Declaration of the Rights and Duties of Man. Thus the question arises of whether Amnesty Law precedes the jurisdiction of most of the treaties, or whether the adoption of the treaties implies the unconstitutionality of the Amnesty Law. Either way, it is difficult to make an argument for the right to truth using regional and international treaties that lack an explicit right to truth. The treaties, along with countries in the region setting precedent by following the treaties, act merely as "peer pressure" on Brazil to denounce the Amnesty Law. Only in Brazil did the Amnesty Law seem to have the effect of actually impeding trials; among the sixteen countries that have enacted amnesty laws, fifteen have successfully undertaken human rights trials (Melo 2012).

6. Argentina as an Example

Brazil is the latest country to establish a truth commission, following international lead from countries such as South Africa, Sri Lanka, Zimbabwe, and Chad, as well as regional precedents from Argentina, Chile, Peru, El Salvador, Uruguay, and Guatemala. In order to gain insight on Brazil's difficulty with establishing an effective Truth Commission, I will compare Brazil's experience to that of the Argentine Truth Commission. I will summarize the military dictatorship in Argentina, and will draw from Cuevas et al (2002) to illuminate key factors that distinguish the Argentine case. I will point out the differences between the two countries' experiences with a truth commission, and ultimately discuss implicit obstacles to Brazil's truth commission.

6.1 The Truth Commission in Argentina

Towards the end of its dictatorial regime in Argentina, Military Junta faced an economic crisis, social mobilization (the most famous being Madres de plaza de mayo), international pressure, and military defeat. As a result, the military regime negotiated transition to civilian power in 1982, a process that included a military-civilian pact. Raúl Alfonsín was democratically elected president on December 10, 1983, and a few days later he announced the establishment of the National Commission on the Disappearance of Persons (CONADEP) – appointed to investigate and report on cases of disappearances between March 24, 1976 and the democratic elections of December 1993. Cuevas et al (2002) maintains that the establishment of the CONADEP was due to international and national pressure, obligations under human rights and humanitarian law, as well as the demand to legitimize the new democratic order.

Although the government granted the CONADEP full access to documents, files, interviews, and sites, specifications in its mandate created barriers for officials to testify. On September 20, 1984 the Commission presented its result confidentially to the President, with thousands of citizens outside on the Plaza del Mayo. The final report, titled "Nunca Mas" (or Never Again), included names of the perpetrators, and indicated 8,690 cases of disappearances, the existence of 340 detention centers, and provided evidence of coordination of repression in Latin America. One month after the president received the report, it was published for the public. While the CONADEP only had investigative and reporting duties – leaving the responsibility of

finding guilt/innocence to the judiciary – the report included recommendations on how to transmit investigations to the judiciary branch. "Nunca Mas" is still one of the most read documents today, impacting generations both new and old (Cuevas et al 2002).

The military-civilian pact during the transition to democracy eventually resulted in the Amnesty Laws of 1986 and 1987. These laws, along with the 1986 Full Stop Law (which set deadlines for Courts to complete investigations on human rights violations) and the 1987 Law of Due Obedience (which instructed judges to apply the principle of due obedience to all officers below the rank of colonel and close any pending cases against them), protected officials and their subordinates from prosecution (Amnesty 1995). Thus, the public report did not include names of perpetrators, but alternatively did create a pathway for those military officials that did not participate in crimes to clear their name and honor. As such, civilians benefitted from finding out what happened to the disappeared persons and received monetary reparations, but did not receive the satisfaction of discovering the perpetrators of the crime. The IACHR-imposed reparations were intended to satiate the thirst for justice; most civilians, however, sought justice in the form of recognition of truth (Cuevas et al 2002).

6.2 Lessons from the Argentine Example

Although both Brazil and Argentina have undergone military dictatorships, there are key distinctions in their experiences that influenced their respective truth commissions. For one, the number of people affected in Argentina largely outnumbered that of Brazil – 160 *alleged* disappearances in Brazil compared to 8,690 *confirmed* cases in Argentina (CFMDP 2007, Cuevas et al 2002). These numbers help explain why civilian demand for a truth commission was so great in Argentina relative to that of Brazil; the number of people it affected encouraged an active and powerful opposition that mobilized to topple the military government (Mainwaring 1986).

One of the largest and most well-known human rights activist and advocacy groups in Argentina was Madres de plaza de mayo, an association of Argentine mothers whose children disappeared during the military dictatorship between 1976-1983. Every Thursday for more than a decade, they would protest in front of the government house, calling for more investigations and the release of names. In January 2006 they had their last march, claiming that the enemy wasn't the government anymore. This was largely due to President Néstor Kirchner's push to declare the Full Stop Law and the Law of Due Obedience as unconstitutional (Madres 2012, Amnesty 1995). The group is just one example of the powerful civilian movements that demanded the CONADEP, and continues to actively seek missing children, as well as pressure the government to do so.

Second, the period of military rule in Brazil was longer than that of Argentina, and was marked by much economic growth. This created many conflicts of interest among important political actors. It also happened that leaders of dictatorship in Brazil orchestrated, and stayed in power through, the transition to democracy, due to their relative strength rather than weakness, as was the case in Argentina (Mainwaring 1986). Third, the proximity of the end of the dictatorship to the creation of the truth commission in Argentina capitalized on raw emotions and desires for justice among civilians. The fact that Brazil is just beginning its truth commission more than 25 years after the end of the dictatorship accounts for the lack of momentum and demand. While in Argentina left-wing initiatives were able to gain power, the right wing regime defeated and overpowered similar movements in Brazil.

From this comparison, it is clear that what Brazil lacks is the incredible demand for an effective truth commission by civilians – as was present in Argentina. The following sections will discuss the possible way to address the ineffective Truth Commission and the right to truth in Brazil, and will present the implications of such solutions.

7. Possible Approaches and their Implications

If Brazil is to continue on its current trajectory with a Truth Commission of limited capacity and institutional support, there is little hope that the Commission will come away with the desired results. The military still holds ample power in Brazil, and will create obstacles by blocking access to its documents and citing the Amnesty Law when international organizations try to impose rulings. However, Brazil can hope that by creating a truth commission, it has asserted itself as a legitimate democracy, and will encourage other countries to pursue truth and reconciliation processes. Outlined below are other approaches that Brazil can take to alleviate the issues facing the Truth Commission – specific to the Amnesty Law and to creating demand among civilians.

7.1 What can be done about the amnesty law?

Filho (2012) believes that President Rousseff needs to proclaim the IACHR ruling as law, and institute a compromise between the Brazilian and IACHR stances: individualized amnesty. This means that the government would not prosecute state agents or members of the resistance as long as they cooperate with the work of the commission. Those that do not come forward, however, could be prosecuted. Individualization of amnesty has the following benefits: incentive to speak, informal punishment, and focus on the survivor (Filho 2012). Individualized amnesty would encourage guilty parties to come forward and reveal the truth with the incentive of not being formally punished. They would, however, suffer an informal punishment from society in general, as a result of knowing the truth about these individuals. This "informal social sanction" can ensure that perpetrators face some penalty for their past actions. Finally, this sort of amnesty law would focus on finding the truth for the individuals and families affected, benefitting the victims rather than singling out those at fault.

This strategy would benefit the Truth Commission and help the victims come to terms with the past, but could have controversial implications for the relationship between the IACHR and the government of Brazil. Taking the IACHR ruling as law would suggest the superiority of regional/international law over domestic law, creating a risky precedent for future disputes.

Another approach would be to adhere to Amnesty Law, Supreme Court ruling, and the military stance against the Commission, and focus on how to address present and future human rights abuses, rather than dwell on past abuses through the Truth Commission. This would entail the creation of more targeted human rights law, outlining protocols in the case of abuses, as well as measures to prevent future amnesty laws from passing.

7.2 Civilian Demand Approach

The two approaches outlined above, while arguably practical, are very passive, and will not bring truth and justice to the people of Brazil. A more progressive approach would take lessons learned from Argentina's experience to stimulate civilian consciousness of the abuses carried out during the dictatorship, in order to encourage demand for an effective truth commission. A small scale example of this exists at the Universidade de Santa Catarina in Florianópolis, Brazil: *o Memorial dos Direitos Humanos* (MDH) created a website with

timelines, updates, and a bibliography of academic literature, periodicals, news articles, and websites with the military dictatorship and Truth Commission as the subject matter – the first of its kind in Brazil (MDH 2012). MDH also ran a campaign on campus in 2012 to raise awareness about the abuses during the military dictatorship, in light of the official creation of the Truth Commission in Brazil.

The success of this campaign on campus was astounding – large turnouts at events were complemented by increased cognizance of the military regime. While this was effective on a small scale, there is a need for such campaigns at a large scale through government education programs and advertising campaigns. Although President Rousseff's generation lived through the dictatorship, they were not as affected on an individual and personal level as were people in Argentina. Younger generations now are almost completely removed from the dictatorship. Consequently there is little demand for the right to truth, and thus a proportional response from the government – aside from Rousseff. But, this is not Rousseff's fight; it is the fight of the Brazilian people, not just for truth, but also for true democracy.

8. Conclusion: Does Brazil have the right to truth?

In order to proceed as an emerging world power, Brazil will need to take fair and effective measures to uncover what happened during the military dictatorship. Brazil can learn a lot from the experiences of Argentina, both on the procedural and civilian side. I suggest that Brazil does have the right to truth; it will only be acknowledged, however, if there is sufficient civilian demand.

First, Brazil needs to frame 'the right to truth' not as the right to publish all the names of perpetrators, but as freedom of information (Melo 2012). Thus the Commission would not focus so much on the investigation and punishment of human rights violators, but rather on the victims. Second, Brazil needs to limit the scope of the Truth Commission, and take steps to meet the full right to truth. Because of the strong military presence in Brazil's government, the Truth Commission should begin by following Argentina's lead in only searching for disappearances during the military regime and only publicly releasing the victims' names and whereabouts. This would ease the military's reservations about the Truth Commission, give the Commission more information, and thus bring a certain extent of closure to the families and friends of victims.

Third, Brazil needs to engage its civilian population in the process through educational campaigns – for there can be no 'right to truth' without the demand for it. To echo Melo's (2012) sentiments, the truth is not only an individual right of victims; it is a collective right of society, thus the society in its entirety must fight for truth.

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