3rd Universal Periodic Review
Stakeholder Submission



Centro de Estudos sobre Justiça de Transição (CJT) da Universidade Federal de Minas Gerais (UFMG) (Study Center on Transitional Justice)

The *Centro de Estudos sobre Justiça de Transição of the Universidade Federal de Minas Gerais* (Study Center on Transitional Justice of the Federal University of Minas Gerais - CJT/UFMG) is a work and research group founded in 2015 at UFMG' Law School, and nowadays it is composed by members and researchers from different universities, in Brazil and abroad. The CJT focuses on empowering and promoting the right to justice, to memory and to truth, as mechanisms of transitional justice. CJT is a member of the *Rede Latino-Americana de Justiça de Transição* (Latin American Network of Transitional Justice, RLAJT), a group of actors, composed by universities, government and NGO's, involved in the transitional justice subject in Latin-america, whose aim is to interconnect such members enabling the exchange and confection of information that impacts in public policies relating to the theme.

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I. Introduction

1. The *Centro de Estudos sobre Justiça de Transição* (CJT) has prepared the present submission.

2. The issues highlighted and recommendations made in this submission are mainly related to transitional justice, the right to truth and to memory and the analysis of measures made by Brazil regarding punishing crimes against humanity since the last UPR.
3. The first part of this report will focus on the **recommendations of the 2nd cycle/13th session** regarding legislative and judicial measures to a) punish crimes against humanity and human rights violations;[1] b) promote human rights, including the right to truth;[2] c) and, in a broader manner, the strengthening of the process of truth-seeking.[3]
4. The second part will relate to the recommendations regarding the production of reports in order to promote human rights, especially on transitional justice and the truth-seeking process.

II. Legislative and Judicial Framework

A. Typification and punishment of crimes against humanity

5. It has been recommended in 2012 that Brazil fully aligned its national legislation will all Rome Statute's obligations, including definition of crimes and general principles. However, **Brazil did not edit specific legislation, e.g. alterations in its Penal Code, in conformity with the Rome Statute in order to incorporate its obligations.**
6. Although the ratification of treaties occur through the edition of law (ICC's Statute is incorporated in Brazil through the Decree nº 4388 from 2002),[4] international obligations assumed by Brazil are not fully observed by the Judiciary.
7. The punishment of crimes against humanity, for example, is very often impaired. Our national tribunals rarely understand that these crimes are not reached by statutes of limitation.
8. Alongside, the edition of the Amnesty Law (*Lei de Anistia*, Lei nº 6.683/1979) and the (wrong) recognition of its constitutionality by the Supreme Federal Court (*Supremo Tribunal Federal*, STF) in 2010 (judgement of the ADPF 153) are also, and still,[5] a factor of impairment of punishment of crimes committed during the dictatorship (1964-1985).
9. It is important to notice that the Inter-American Human Rights Court (I/AHR Court) has already had the opportunity to pronounce about the unconventionality of the *Lei de Anistia* in the *Gomes Lund* Case.[6] Furthermore, although Brazil was, in that opportunity, **expressly convicted to edit legislation criminalizing enforced disappearance**[7], which is also foreseen as crime in the Statute of Rome (art. 7.1.i), **Brazil has not done so**.
10. Also, the obligations aroused to the parties of the American Convention on Human Rights and, therefore, members of the Inter-American Human Rights System, are that to not only adopt internal measures (legislative, judicial, administrative and others) in order to align its state practice to the Convention (article 2) and the enforcement of human rights, but also to prevent, investigate and sanction violations to human rights (article 1.1) *ex officio* with or without specific law concerning it.
11. Therefore, **even if there is no specific legislation that enshrines the Rome Statute's principles, Brazil is obliged to judge human rights violations according to the best norm to the individual** (article 29.b, American Convention) **and apply the control of conventionality.**

1 Recs. **119.5**: "Fully align the national legislation with all obligations under the Rome Statute of the ICC, including incorporating the Statute's definition of crimes and general principles, as well as adopting provisions enabling cooperation with the ICC" and **119.122**: "Ensure that all members of the police and prison officers that commit human rights violations and abuses, such as torture and ill-treatment, are held accountable".

2 Recs. **119.115**: "Continue to promote reforms to the Judicial System which incorporate the prioritization of the respect for human rights".

3 Rec.**119.124**: "Continue working for the strengthening of the process of truth-seeking" and **119.125:** "Continue its efforts to guarantee the right to the truth for victims and families of serious human rights violations and for all Brazilian society, ensuring proper functioning of the Truth Commission".

4 Available at: http://www.planalto.gov.br/ccivil_03/decreto/2002/D4388.htm. Access on 05/10/2016.

5 This issue has already been addressed in the last UPR by stakeholders.

6 I/AHR Court. *Caso Gomes Lund e Outros ("Guerrilha do Araguaia") vs. Brasil*. Sentence from November 24th 2010. Serie C, No. 219.

7 *Caso Gomes Lund e Outros…*, para. 325.15.

12. In other words, Brazilian Courts must share the view that crimes against humanity are not reached by statutory law and, in that way, not deny justice in cases related to the dictatorship events. If not so, the impunity surrounding state agents and officers who committed human rights violations, such as torture, will continue.

13. One of the works promoted by CJT is the raising and follow-up of judicial actions on transitional justice that can be found on our website (https://cjt.ufmg.br/index.php/ditadura-e-responsabilizacao/).

14. From 24 criminal actions analysed, 10 were initially rejected on the argument that the crime had prescribed and 8 have still not been analysed at all (no judgement of admissibility was made). That enforces the argument that **Brazil has not accomplished to apply the Recommendations 119.5 and 119.122 of the 2nd cycle/13th session.**

B. Human rights promotion: right to truth

15. After Brazil's condemnation by the I/AHR Court in the *Gomes Lund case*, the State and its multiple levels and organs have mostly remained motionless. The *Ministério Público Federal* (MPF), the responsible organ for criminal prosecution, however, has established an institutional fight to promote the criminal condemnation of those responsible for human rights violations during the military dictatorship. The MPF has based its actions on the notion that STF's decision on the ADPF 153 does not clash with the *Gomes Lund* sentence by the I/AHR Court.[8]

16. In its performance, the MPF has also brought to the Brazilian legal framework and praxis the international notion that human rights violations are not reached by statutes of limitations (Brazil is not a State-party to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity. In more than one opportunity the current Federal General Attorney (*procurador-geral da República*) has demonstrated the incorporation of the concept of crimes against humanity in Brazil's transitional justice process.[9]

17. However, the judiciary has proven to be a major barrier in the search of the criminal responsibilization of human rights violators. In that sense, the **Recommendation. 119.115** of the 2nd cycle/13th session of to continue to promote reforms to the Judicial System which incorporate the prioritization of the respect for human rights **has not yet been not followed.**

18. Of the mentioned 24 criminal cases related to the human rights violations committed during the military dictatorship, not one has not found obstacles in the Judiciary. Mainly, the judges tend to ignore International Human Rights Law, including the *Gomes Lund* case and I/AHR Court's jurisprudence on forced disappearance, and apply the Amnesty Law without further consideration.[10]

19. Not only is the current picture of the observation of human rights in the Judiciary not favorable. It comes with the indifference for the country's international obligations. Judicial reforms started around 2008, with the creation of the *Secretaria de reforma judicial* (secretary for judicial reform), have been interrupted by the extinction of such organ.[11]

C. Strengthening of the process of truth-seeking

20. The delivery of the *Comissão Nacional da Verdade's* (National Truth Commission, CNV) final report in December 2014 was a mark in the history of the truth-seeking process in Brazil. However, its works have been object of great criticism by sector of civil society, especially victims and victim's

8 MEYER, E.P.N. Responsabilização e Ditadura in CARVALHO, C., GUIMARÃES, J.O., GUERRA, M. P. *Justiça de Transição na América Latina Panorama 2015* (bilingual). Brasília: Ministério da Justiça, Comissão de Anistia, Rede Latino-Americana de Justiça de Transição (RLAJT), 2016. p. 51.

9 MEYER, E.P.N. Responsabilização e Ditadura in CARVALHO, C., GUIMARÃES, J.O., GUERRA, M. P. *Justiça de Transição na América Latina Panorama 2015* (bilingual). Brasília: Ministério da Justiça, Comissão de Anistia, Rede Latino-Americana de Justiça de Transição (RLAJT), 2016. p. 51.

10 The list of cases, their status and pertaining documents can be found at: https://cjt.ufmg.br/index.php/ditadura-e-responsabilizacao/acoes-criminais/.

11 SADEK, T., RENAULT, S., BOTINNI, P. C. *Fim da secretaria de reforma do judiciário é uma perda importante*. Folha de São Paulo. 29/03/2016. Available at: http://www.conjur.com.br/2016-mar-30/fim-secretaria-reforma-judiciario-perda-importante. Access on 05/10/2016.

families. The criticism revolves around the fact that CNV's work has turned out to be more of systematization, than proper investigation.[12]

21. One central topic of disagreement is the death of former president Juscelino Kubitschek. The CNV has stated that the car accident in which he died was truly, an accident.[13] The *Comissão Municipal da Verdade Vladimir Herzog*, of the city of São Paulo, however, has organized a thorough report, with plentiful evidence that indicate JK' was actually forced out of the road and died in a planned action of the military.[14]

22. The creation of a truth commission in national level has led to a multiplication of truth commissions in regional and thematic axes, such as the municipal ones in São Paulo e Rio de Janeiro, the state level in Minas Gerais and Pernambuco, and institutional ones, such as the one in the Rio Grande do Norte University and at the Brasilia University.[15] This proliferation has allowed a more in depth look in certain regions and topic that, at national level, had not gained much attention, such as repression and indigenous population, gender and sexual orientation related repression.[16].

23. **The truth-seeking process in Brazil, however is still impaired by some factors**. Throughout CNV's work, for example, it became clear that the Armed Forces, institutionally, do not recognize its responsibility in violations committed during the military dictatorship. They do not collaborate with the investigations, withholding information and documents.[17]

24. **Recommendations 119.124 and 119.125 have been partially implemented.**

III. Human rights Reports

25. **Recommendation 119.25** reads: "Ensure that federal and state authorities work more efficiently together to produce statistics and regular human rights reports.", and **recommendation 119.26** goes in the same direction: "Continue to prepare reports in order to enhance and promote the human rights situation". Being recommendations that relate to the methods used in implementing human rights policies and protection, rather than material ones, they encompass a wide range of reports that can deal with different aspects of human rights.

26. Considering CJT's subject of work, this topic will focus on reports regarding transitional justice and the truth-seeking process.

27. In 2011, Brazil's Amnesty Commission (*Comissão de Anistia*) launched project BRA/08/021, which aimed to establish cooperation for international exchange, development and expansion of Transitional Justice policies in Brazil.

12 GOMBATA, M. Comissão da Verdade Fracassou, reclamam escritores. Revista Carta Capital. Available at: http://www.cartacapital.com.br/sociedade/comissao-da-verdade-fracassou-reclamam-escritores. MARTINS, R., Para famílias de vítimas da ditadura, CNV trouxe justiça histórica, mas não de fato. Revista Carta Capital. Available at: http://www.cartacapital.com.br/sociedade/para-familiares-de-vitimas-da-ditadura-relatorio-traz-justica-historica-mas-nao-justica-de-fato-5814.html. FACHIN, P., COSTA, A. Interview: "A Comissão da Verdade não buscava investigar, ams sistematizar". Revista Carta Maior. Available at: <http://cartamaior.com.br/?/Editoria/Direitos-Humanos/Comissao-da-Verdade-nao-buscava-investigar-mas-sistematizar-/5/32635>. All accessed on 05/10/2016.

13 BALZA, G. Morte de JK foi acidental, concluis Comissão Nacional da Verdade. Available at: <http://noticias.uol.com.br/politica/ultimas-noticias/2014/04/22/comissao-nacional-da-verdade-conclui-que-jk-nao-foi-morto-pela-ditadura.htm>. Access on 05/10/2016.

14 DOMINGOS, R. *Comissão Municipal da Verdade de São paulo apresenta relatório final*. Availabe at: http://g1.globo.com/sao-paulo/noticia/2015/10/comissao-municipal-da-verdade-de-sao-paulo-apresenta-relatorio-final.html. Access on 05/10/2016. See also: MEDEIROS, L.V., OCTAVIANI, A, BRAGA, M.A. *O assassinato de JK pela ditadura*. Brasil, São Paulo: Liber Ars. 2016.

15 CARVALHO, C., GUIMARÃES, J.O., GUERRA, M. P. *Justiça de Transição na América Latina Panorama 2015* (bilingual). Brasília: Ministério da Justiça, Comissão de Anistia, Rede Latino-Americana de Justiça de Transição (RLAJT), 2016. p. 42.

16 Idem, p. 43.

17 PAIXÃO, C., et. al. *Relatório 2014*. Brasília: Ministério da Justiça, Comissão de Anistia, Rede Latino-Americana de Justiça de Transição (RLAJT), 2015. pp.17/22.

28. Driven by this project, in 2013 the RLAT was founded considering the difficulties surrounding the search for information about the current situation of the Transitional Justice policies in Latin American countries.

29. RLAJT was created to work as a connect tool between governmental and educational institutions as well as civil society representatives, enhancing access to contacts and technical information on the topic. Its goals are to facilitate and to promote communication and exchange of knowledge on the topic of Transitional Justice in Latin America, along with giving visibility to the experiences in the region.

30. Nowadays, no longer does the *Comissão de Anistia*, which first acted as the impeller of the project, direct the RLAJT; it is now autonomous, directed by its members. The *Comissão de Anistia*, part of the Brazilian Government, however, still finances the group's activities.

31. The network has focused in putting together guidelines and reporting the current situation of the transitional justice field in Latin America. In 2015, the first publication was the report called *Relatório 2014*,[18] which accounted the general picture of the topic on each country of the RLAJT: Argentine, Brazil, Chile, Colombia, El Salvador and Peru.

32. This first work answers the need of a proper diagnostic of the different transitional processes in these countries, on top of which the members of the network could work on a common political agenda for the challenges they face.

33. After this first work, the network has not stopped producing material to be used in the fight to enhance and promote human rights, not only in Brazil, but also in the region.

34. In January 2016, the RLAJT published *Recomendações sobre a Judicialização da Justiça de Transição*[19] (Recommendations on the Judicialization of Transitional Justice) and *Recomendações sobre princípios e obrigações no tratamento de arquivos de direitos humanos*[20] (Recommendations on Principles and Obligations in the Treatment of Human Rights Archives).

35. Consultants of the RLAJT also organized the publication *Justiça de Transição na América Latina Panorama 2015*[21] (Transitional Justice in Latin America Overview 2015), providing an up-to-date report on the situation for transitional justice in the region, and enabling comparison with the 2014 report.

36. In addition, in response to the demands of the members, the RLAJT has focused in specific topics, producing material on the current status of the judicialization of transitional justice in Latin America[22] and of the treatment of human right archives[23].

37. The network has continued its efforts in producing such necessary material, and the current topics of research are crimes of sexual nature and enforced disappearance in the authoritarian rules in Latin America. The reports on both topics are programmed to be released in 2017.

38. It is, however, important to point out, that, as mentioned above, the financing of the activities of the network is provided the Brazilian Federal Government's Comissão de Anistia and, after the inauguration of Michel Temer's administration, the organ has suffered some interferences from the

18 PAIXÃO, C., et. al. *Relatório 2014*. Brasília: Ministério da Justiça, Comissão de Anistia, Rede Latino-Americana de Justiça de Transição (RLAJT), 2015.

19 REDE LATINO-AMERICANA DE JUSTIÇA DE TRANSIÇÃO. *Recomendações sobre a Judicialização da Justiça de Transição*. Brasília, 14 de janeiro de 2016.

20 REDE LATINO-AMERICANA DE JUSTIÇA DE TRANSIÇÃO. *Recomendações sobre princípios e obrigações no tratamento de arquivos de direitos humanos*. Brasília, 14 de janeiro de 2016.

21 CARVALHO, C., GUIMARÃES, J.O., GUERRA, M. P. *Justiça de Transição na América Latina Panorama 2015* (bilingual). Brasília: Ministério da Justiça, Comissão de Anistia, Rede Latino-Americana de Justiça de Transição (RLAJT), 2016.

22 OSMO, C. *Judicialização da Justiça de Transição na América Latina* (bilingual). Brasília: Ministério da Justiça, Comissão de Anistia, Rede Latino-Americana de Justiça de Transição (RLAJT), 2016.

23 SANTOS, S.M.P. *Tratamento dos arquivos de direitos humanos na América Latina* (bilingual). Brasília: Ministério da Justiça, Comissão de Anistia, Rede Latino-Americana de Justiça de Transição (RLAJT), 2016.

government[24], such as the disconnection and substitution of members which lead to uncertainties as to whether the precious work of the Rede Latino-Americana de Justiça de Transição will be supported by the new administration.

39. Regarding the recommendation 119.124 **"Continue working for the strengthening of the process of truth-seeking"**, the Comissão da Anistia in a partnership with the Federal University of Minas Gerais, developed the project of an Amnesty Memorial (Memorial da Anisitia Política) in order to provide for the public the documents raised up by the Comissão da Anistia and by the National Truth Commission. This memorial will take place in Belo Horizonte, in a former building from the Federal University. However, the renovations in the building were supposed to be finished in 2014, but they are still not completed. And now the Federal Government stopped the transfer of funds for the project, so the renovations are suspended.

40. Therefore, Recommendations 119.25 an 119.26 have been partially implemented.

[24] CONJUR. *Ministério da Justiça muda 19 dos 24 membros da Comissão de Anistia*. Available at: http://www.conjur.com.br/2016-set-02/ministerio-justica-muda-19-24-membros-comissao-anistia.TELESUR. *Temer appoints dictatorship defender to Amnesty Comission*. Available at: http://www.telesurtv.net/english/news/Temer-Appoints-Dictatorship-Defender-to-Amnesty-Commission-20160903-0023.html. Both accessed on 01/01/2016.