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Brazil: A genuine commission for truth and justice must put an end to legacy of past crimes

The announcement by President Lula of the country's third national human rights plan stands as both hope for an improved future and a challenge to all levels of Brazilian government to finally deliver the human rights guarantees which are still desperately lacking in most parts of the country.

Central to the new plan was the welcome inclusion of the right to memory and truth, with the promise of the formation of a commission to investigate and publicize the human rights crimes committed under the country's military regime.

Amnesty International said it hopes this commission will finally bring Brazil into line with other countries in the region which have long made efforts to bring those responsible for crimes such as disappearance, torture and extra-judicial execution to justice while ensuring victims' families rights to reparation.

The legacy of unpunished past human rights crimes lingers on in the daily reports of police killings and torture cases that characterize Brazil's criminal justice system today.

Amnesty International is concerned, though, that the present proposals made by the Brazilian authorities for the creation of such a commission does not appear to fully meet all of the three essential pre-requisites:

- Truth: establishing the facts about violations of human rights that occurred in the past;
- Justice: investigating past violations and, if enough admissible evidence is gathered, prosecute the suspected perpetrators through judicial independent mechanisms;
- Reparation: providing full and effective reparation to the victims and their families, in its five forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non- repetition.

The organization said that torture and enforced disappearance are crimes under international law which do not prescribe nor can be seen as political acts. Justice and full reparations for past human rights abuses are an essential way to stamp out human rights crimes and bring peace and restitution to victims and their loved ones. These must not be jeopardized by political negotiations or maneuvering.

Amnesty International welcomes promises by the Brazilian government to fully disclose all relevant military files, particularly those related to cases of disappearances. The organization also urged the authorities to ensure that lawyers representing the Brazilian state should no longer seek to protect past human rights violators under the country's 1979 Amnesty law, while all efforts must be made to challenge interpretations of the law which have sustained longstanding impunity.

Background information

From 1964 to 1985 Brazil was ruled by a military government, which came to power following a coup ousting the government of president João Goulart. During the regime hundreds of political activists, union leaders, members of religious orders as well as opposition groups were disappeared, arbitrarily detained, tortured and many, executed. Brazil has lagged behind the rest of the region in investigating these crimes using a controversial interpretation of the country's 1979 Amnesty law to protect the torturers and killers of the regime.

A submission has been made to the country's Supreme Court (STF) to challenge the longstanding interpretation that the torture, disappearances and extra-judicial executions committed by members of the regime were political acts and thus amnestied under the law. A ruling is still pending.

Attempts by the federal government to offer limited access to past military archives and to identify the location of members of an armed opposition group allegedly executed by the army in Araguaia, in Pará have so far been dismissed by some victims and their families for failing to provide full transparency and justice. Some political prisoners from the period have received financial compensation.

In 2007 a special commission formed on Political Dead and Disappeared published a report entitled the right to Memory and Truth. However, in October 2009 the Brazilian government appealed to the Inter-American Court of Human Rights that it close the case against it on the disappearance of armed opposition activists in Araguaia.

Principle VII of the Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law explains:

“Remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim's right to the following as provided for under international law: (a) Equal and effective access to justice; (b) Adequate, effective and prompt reparation for harm suffered; and (c) Access to relevant information concerning violations and reparation mechanisms.”

With respect to past human rights violations, states must ensure that the truth is told, that justice is done and that reparation is provided to all the victims. In this sense, truth, justice and reparation are three aspects of the struggle against impunity.

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