BETWEEN REPARATIONS, HALF TRUTHS AND IMPUNITY: THE DIFFICULT BREAK WITH THE LEGACY OF THE DICTATORSHIP IN BRAZIL*

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Like many other countries in the region, Brazil was also governed in the second half of last century by military forces that usurped power and operated within an ideological structure based on the doctrine of "National Security", and against the international backdrop of the Cold War. The Brazilian dictatorship was structured to eliminate domestic subversion from the left and to reestablish "order" in the country, and it was organized to spread fear and demobilize society, with anyone opposing its ideas being classifying as enemies of the state. With the declared goal of ridding the country of corruption and of the communist threat, the dictatorship in Brazil consisted of at least three distinct stages and it made use, among other legal mechanisms, of so-called Institutional Acts (AIs) to exercise power. It also employed a variety of methods to punish and persecute people it considered its opponents, and used emergency measures to limit or suppress the right to defense of those accused of crimes against national security. Among the most frequently adopted penalties were exile, suspension of political rights, loss of political mandate or removal from public office, dismissal or loss of union mandate, expulsion from public or private schools and imprisonment. Just as arbitrary detention was commonplace, so was the use of torture, kidnapping, rape and murder. And although it may

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not be formally considered a punishment, the practice of including the names of regime opponents in the files of the security agencies effectively served as one. (DALLARI, 197?). There was also the death penalty, established by AI-14, although it was never officially used. To eliminate its opponents, the government instead carried out summary executions or killed its victims during torture sessions, always behind closed doors (FAUSTO, p. 481).

1 The stages of the dictatorship

The first stage of the Brazilian dictatorship can be placed between the coup d-état, when in April 1964 the self-named Supreme Revolutionary Command issued AI-1 establishing a state of emergency in the country, and the consolidation of the regime imposed by the military. Signed by the commanders-in-chief of the three armed services, this Act formally maintained, after several modifications, the Constitution of 1946, but significantly expanded the powers of the Executive. Unlike other Latin American countries, the National Congress continued to function, albeit in a restricted manner – the Congress had, for example, a very short time schedule of just one month to vote on bills submitted by the President of the Republic. AI-1 suspended for six months the constitutional guarantees of job stability and lifetime tenure for holders of public office, thereby allowing, "upon summary investigation", the dismissal of civil servants and military personnel. It is estimated that initially some 10,000 civil servants were sacked and 5,000 investigations were opened involving more than 40,000 people. Article 10 of this Act also authorized the suspension of political rights and the removal of elected officials. In this first punitive cycle, whose initial list contained over a hundred names, including those of former president João Goulart and prominent politicians such as Leonel Brizola, Miguel Arraes and Celso Furtado, 2,985 Brazilian citizens were removed from public office. Furthermore, shortly after the coup, ships were converted into prisons, 20 generals and 102 officers were quickly transferred to the reserve corps, the Workers General Command (CGT) – the main trade union federation – was closed, all the other umbrella union groups and hundreds of individual unions were placed under intervention, and the *Ligas Camponesas* – a league of rural organizations fighting for land reform – was abolished. The activities of the National Union of Students (UNE) and the Brazilian Union of Secondary School Students (UBES) also ground to a halt. In the first few months of military rule, an estimated 50,000 people were detained. Following AI-2, presidential elections were made indirect, political parties were abolished and a further 305 people were "punished". In the third wave of repression, 1,583 citizens lost their political rights (ARNS, 1985, p. 61-68; MARTINS, 1978, p. 119-122, 127; GRECO, 2003, p. 266; BRASIL, 2007a, p. 30. UNIÃO ESTADUAL DOS ESTUDANTES, 1979, p. 3). AI-3, in February 1966, extended the powers of the Legislative Assemblies, which, in addition to appointing state governors, also began to name the mayors of state capitals and of other cities classified as crucial to "national security" (GREEN, 2009, p. 97).

The second stage of the dictatorship began in December 1968, with the enactment of AI-5, which granted the President of the Republic powers to temporarily close the National Congress, intervene in the states and suspend individual rights and the guarantee of *habeas corpus*. In this so-called "coup within a coup", former president Juscelino Kubitschek and former governor Carlos Lacerda were arrested and political rights were suspended not only of members of the opposition MDB party, but also of Arena, a party that supported the military government. This is the period when repression reached its peak, with strict censorship of the press and punitive measures in universities. While they governed the country, and in contrast to dictatorships such as Chile's, for example, the generals in Brazil alternated the office of president, establishing a type of power rotation, in processes of succession in which only their peers participated. The presidency of General Ernesto Geisel, who took office in 1974, marked the start of the third stage of the dictatorship, which was characterized by the slow process of political liberalization that would continue until the end of the regime. In 1978, the political banishments started to be revoked and the Ministry of Foreign Relations began to make it easier for Brazilians living in exile to secure passports and travel papers (SOARES; D'ARAUJO; CASTRO, 1995, p. 308). Censorship was relaxed and the intelligence and security agencies had their powers curtailed. After 10 years, AI-5 was repealed.

Marked by the inexistence of the Rule of Law and, therefore, by the constant disregard for fundamental legal principles and the broad repressive powers at the disposal of the security forces, the conditions imposed by the doctrine of "National Security" relied on the administration of military justice to remain in place. As "legal grounding" for its abuses, the regime depended on the Military Criminal Code, the Code of Military Criminal Procedure and the Military Judiciary Organization Law. Decreed in 1969, these laws "regulated" the security forces, making them the proper authorities to order and enforce the imprisonment of any person, and they also changed the definition of crimes against national security and gave the military justice system jurisdiction to prosecute all such crimes, including, for example, bank robbery (BRASIL, 1982, v. 2, p. 524; D'ARAUJO; SOARES; CASTRO, 1994, p. 19). Another authoritarian edict enacted in the same year was the National Security Law (LSN), which was the practical application of the principles of the doctrine of the same name (INSTITUTO INTERAMERICANO DE DIREITOS HUMANOS, 1991, p. 44). To control and/or repress society, the government made use of the apparatus formed by the National Information Service (SNI), the Intelligence Agencies of the Army (CIEX), the Navy (CENIMAR) and the Air Force (CISA), and the Office of Information and the Center for the Operation of Internal Defense (DOI-CODI). São Paulo had an additional intelligence and security agency, known as Operation Bandeirantes (OBAN). To stand up to this military oppression, given the increasing degeneracy of the dictatorship, some leftist organizations opted for armed resistance (BRASIL, 2007a, p. 24).

Over the duration of the regime, it has been calculated that 10,000 Brazilian citizens left the country to live in exile – at least 130 were banished.

Until 1979, data from the research project *Brasil: nunca mais* (Brazil: never again) reveal that 7,367 people were tried and 10,034 people were interrogated, 6,592 military personnel were "punished" and at least 245 students were expelled from their universities (ARNS, 1985, p. 61-68; MARTINS, 1978, p. 119-122, 127; GRECO, 2003, p. 266; BRASIL, 2007a, p. 30). The string of Institutional Acts and the well-documented persecutions led the São Paulo State Union of Students to estimate, in the late 1970s, that more than half a million people were arrested, banished, exiled, removed from public office, forced into retirement, prosecuted or indicted by the regime (UNIÃO ESTADUAL DOS ESTUDANTES, 1979, p. 3). In the book *Liberdade para os brasileiros: anistia ontem e hoje* (Freedom for Brazilians: amnesty yesterday and today), published in 1978, Roberto Ribeiro Martins goes a step further. He calculated the number of Brazilians who would be in direct need of amnesty at more than a million. "Which means, for every hundred Brazilians, at least one needs amnesty," he wrote, at the time (MARTINS, 1978, p. 152).

2 The struggle for amnesty

Unlike what was observed in other countries in the region, amnesty in Brazil for the victims of political persecution was not only highly desired, but also constantly demanded, right from the start of the dictatorship. In fact, a veritable struggle for amnesty began to be waged 15 years before the enactment of the law by a few exponents of the political and intellectual class, gaining momentum in society until it eventually involved a significant portion of Brazilians. By the late 1970s, on streets and soccer fields, for example, posters and banners could be seen in support of amnesty. Window stickers were displayed on cars, pamphlets were distributed on street corners and rallies were held to raise public awareness on the subject. The struggle for amnesty was by now taking place within a context of democratization, of returning to the Rule of Law and of recognition and defense of human rights, and it enlisted the support of international groups and celebrities. This foreign pressure exerted on the government did not, however, produce the anticipated results, although it did achieve significant success internationally exposing the horrors of the regime.

It was in a context of political liberalization, therefore, when responsibility for the death under torture of the journalist Vladimir Herzog was weighing on the Brazilian State, and when the military regime was more receptive to the idea of multi-party politics, that the government effectively began to consider amnesty. In June 1979, a bill for this purpose was submitted to the Congress by the then President of the Republic, General João Baptista Figueiredo. During its passage through the legislature, there was practically no exchange of ideas with society, nor with the potential beneficiaries of the law, although the Brazilian Amnesty Committees had mobilized to put a stop to torture and shed light on the cases of disappearances, and also to prevent the law from benefitting the "tormenters" of the regime's victims.

Approved in August 1979, Law No. 6,683, or the Amnesty Law[1], fell far short of the intentions of the movement that had been calling for it, and it did not redress even the basic grievances of the victims of political persecution. Excluded from the scope of the law were certain manifestations of opposition to the regime, classified as terrorism or acts specified in emergency legislation, such as violent crime, and including only those individuals who had not previously been convicted by the dictatorship, which would last almost another six years. That is to say,

> *although of great significance in the country's democratization process, law 6,683 was drafted basically under the government's own terms, proving to be more effective for the members of the apparatus of repression than for the victims of political persecution, and incapable of putting a stop to the escalation in atrocities that began with the coup in 1964. In other words, the Amnesty Law was restricted by the limits established by the military regime and the circumstances of its time. [...]. Therefore, in those early days, in 1979, it can be said that the amnesty represented an attempt to reestablish relations between the military and the opponents of the regime who had been removed from office, banished, imprisoned or exiled. The law contained the idea of pacification, harmonization of differences and, by permitting an impasse to be broken, it ultimately acquired a sense of pragmatic conciliation, capable of contributing to the transition to democratic rule.*
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> (MEZAROBBA, 2006, p. 146-147).

3 The start of the process of making amends

Despite the intentions of the military to shut the door on the human rights violations committed during its rule, the Brazilian State nevertheless embarked in a quite unique process of making amends with the victims of the dictatorship and with society. Since the Amnesty Law was incapable of redressing the main grievances of the victims of political persecution and the families of the victims who were killed by the regime (article 6 of the law, for example, only permitted the spouse, a relative or the Public Prosecutor's Office to request a missing persons report for someone who, involved in politics, had disappeared from their home and not given news for over a year, starting from the date the law came into effect), the matter naturally remained unsettled throughout this period of "détente".

In Brazil, as is well known, the transition to democracy took several years and was negotiated from the outset and defined in a type of "agreement" between the elites, which

> *[...] may be summed up as a compromise whereby the military would gradually withdraw from politics, retreating to the point of its political role at the start of the Republic: that of the guarantors of last resort of public order, i.e., of the stability of the republic's political institutions. The civilian elites, meanwhile, accepted the premise of the military assessment's of the post-1964 period: that it was an exceptional period in which the military intervened in politics to "save" the republic's institutions, a period in which "excessive" acts were committed on both sides (that is, by the military and*

> *the leftist militants). To shut the door on this period, there was to be a "reciprocal pardon", without any investigation into the violations, or even a humanitarian effort to provide the victims and their families with documentation so they could learn the truth about the events or recover the bodies of the people who died or disappeared. This limitation had the clear objective to prevent information from being gathered on the perpetrators of the violations [...].*
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> (IBCCRIM; SABADELL; ESPINOZA MAVILLA, 2003, p. 108-109).

Furthermore, the military left power without direct elections being held for president, which did not contribute to the debate on how to handle the legacy of mass human rights violations accumulated over the 21-year duration of the dictatorship. To complicate matters further, Tancredo Neves, the civilian who had been chosen indirectly by the Electoral College to succeed General Figueiredo as President of the Republic, died before taking the oath of office. As a result, his vice-president, Senator José Sarney, from Arena, a party that supported to the military dictatorship, took power in 1985.

According to Sarney, the issue of the victims of the dictatorship concerned Tancredo Neves: "[...] but, there was absolutely no way (he) could commit himself to a more radical approach to the issue. He was very fearful of a setback." The former president, who was in power from 1985 to 1990, explained that in spite of being "a man of good judgment, of conciliation", Tancredo Neves understood the "delicate nature of the situation and of his responsibilities" and was aware of the resistance from the regime's hardliners:

> *He understood that he should oversee the transition together with the military, not against them. Had he made a more emphatic "commitment" to the issue of the regime's victims, he could have jeopardized the whole process. To illustrate this sentiment, it's important not to forget that he was apprehensive about even convening the Constitutional Assembly and legalizing clandestine political parties. This wasn't among his plans. But since I wasn't caught up in all the complex negotiations or in the compromises that Tancredo had to make to the military, when I took over the Presidency, I could legalize the PC do B [Brazilian Communist Party] and convene the Constitutional Assembly. I could conclude the amnesty, freeing the last of the political prisoners, a measure than benefitted, for example, those punished at Petrobras. Obviously there was resistance from the military.*[2]

Sarney explained that no progress was made on the matter involving the whereabouts of the bodies of victims killed by the dictatorship during his administration, because this "was not an issue on the political agenda". "Nevertheless, it would have been imprudent at that time. The Amnesty Law, as it was negotiated and approved, was the best possible option given the context. Without it, we could have gone in other more divisive directions."[3] It is clear, therefore, that the Brazilian transition was handled so as to avoid what are now known as transitional justice mechanisms from being adopted at the start of the civilian government.

4 Acknowledgement of the responsibility of the State

Numerous efforts were made to expand the Amnesty Law, even before the end of the military regime, although the first breakthroughs in the process of making amends only really came when the military began to lose power and, simultaneously, as democracy matured and as human rights were incorporated into the national agenda. This was how, in December 1995, President Fernando Henrique Cardoso, himself a former political exile, sanctioned Law No. 9,140, or the Law of the Disappeared[4], acknowledging as dead 136 missing political dissidents, whose names are listed in Appendix I of the law. Cases of disappearances in Brazil date back to 1964, but this tactic would only become emblematic of the regime of terror five years later when, in September 1969, following the imprisonment of Virgílio Gomes da Silva, a militant from the National Liberation Action (ALN) guerilla group, who disappeared after being taken, handcuffed and hooded, to the headquarters of Operation Bandeirantes (OBAN) in São Paulo (MIRANDA; TIBÚRCIO, 1999, p. 38-39). The approval of Law No. 9,140 marked the first time in Brazil, outside of a court ruling, that the State accepted objective responsibility for the illicit acts of its security forces. Although the Law of the Disappeared states that the application of its provisions and all its effects shall be guided by the principle of national reconciliation and pacification expressed in the Amnesty Law, with this piece of legislation, as Nilmário Miranda and Carlos Tibúrcio observe, the Brazilian State took broad responsibility for the human rights violations committed during the military regime, namely kidnapping, imprisonment, torture, forced disappearance and murder, including violations against foreigners residing in the country (on the list are the names of four missing political dissidents who are not Brazilian). As a result, their families acquired the right to request the death certificates of the disappeared and receive compensation. After the law came into force, a commission was created to examine allegations of other deaths that were politically motivated and involving unnatural causes "while in police custody or in similar facilities".

Although they acknowledged the importance of the government introducing legislation to address the issue of political deaths and disappearances, the families of the victims killed by the military regime could not fully endorse the new law, among other reasons because it did not compel the State to identify and hold responsible those who were directly involved in the torture, deaths and disappearances, and because it placed the burden of proof on the relatives of the victims. The families also took issue with the government's argument that, given the limits imposed by the Amnesty Law, it was impossible to examine the circumstances of the deaths. They also criticized the requirement that requests for acknowledgement of State responsibility could only come from the families themselves, thereby treating the issue as a family matter instead of a right of society. Throughout the dictatorship and afterwards, during redemocratization, families of the dead and disappeared continued to fight for justice, and their demands were underpinned by their desire to know the truth (the revelation of the circumstances surrounding the crimes), to

determine the culpability of those involved and to locate and identify the remains of the victims. Payment of reparations never figured highly among their demands. Nevertheless, after 11 years of activities, the Special Commission on Political Deaths and Disappearances (CEMDP) had disbursed nearly 40 million *reais* to the families of more than 300 victims killed by the military regime – 475 cases were reviewed by the commission; the average value of each compensation payment was 120,000 *reais* (almost 120,000 dollars at the exchange rate when the law was passed).

In addition to compensation payments, and for the purpose of creating a database of DNA profiles to identify with scientific certainty the bones of victims separated for examination and those that would later be located, the CEMDP in September 2006 started collecting blood samples from the families of more than 100 people killed during the regime. More than 140 political dissidents who disappeared during the Brazilian dictatorship are still missing. The commission continues to work on cataloguing information on the possible locations of secret graves in large cities and on the likely burial sites of militants in rural areas, particularly in the region known as Araguaia.

5 Payment of reparations to victims of political persecution

Unlike the families of the victims killed by the military regime, the victims of political persecution have busily pursued financial compensation. Although the Amnesty Law established, in article 2, that "civil servants and military personnel who were dismissed, placed on leave, forced into retirement, transferred to the reserve corps or stripped of their rank" could request reinstatement to their former positions, this was not actually what happened once the law came into effect. After requesting amnesty, these victims of persecution had to apply for return to active service and submit to a medical examination (which needed to match the last examination prior to their punishment). In order for them to be reinstated to their positions, not only did there need to be a vacancy, but there also needed to be a "public interest" in reappointing them. Probably envisaging the difficulties that would no doubt be encountered, there were concerns even before the law was approved about the usurped rights of these victims, especially in the proposals submitted to the National Congress, particularly those dealing with cases involving civil servants and military personnel who had lost their jobs. While it was still pending in the legislature, the government's amnesty bill received countless amendment proposals granting some kind of compensation to the victims of political persecution. None of them prevailed. When it was sanctioned in 1979, the Amnesty Law barred any possibility of reparation. In article 11, perhaps the most clearly worded of all the articles in Law No. 6,683, the veto was explicit: "This Law, beyond the rights expressed herein, does not generate any others, including those relating to remuneration, payments, salaries, income, restitution, dues, compensation, advances or reimbursements."

After years of dealing with decrees and circulars that, in quite a disorganized way, regulated their remuneration, it was only when Law No. 8,213 came into force, in July 1991, that amnesty recipients secured the right to a special pension. At the

time, there was no shortage of cases waiting in the courts to grant the amnesty that had been denied by the government. The situation would get worse before the third phase of the process of making amends between the State and the victims of the military regime began to be defined. It was only in 1996, one year after the enactment of the Law of the Disappeared, that the victims of political persecution, from various different organizations across all regions of Brazil, decided to unite and speak with one voice. After five years of organized efforts, in 2001 they successfully convinced the government of Fernando Henrique Cardoso to send to the National Congress a bill to compensate the losses of those who had been prevented from performing their work activities as a result of the political persecution suffered during the authoritarian regime. Once Law No. 10,559[5] came into force and the Amnesty Commission was installed in the Ministry of Justice, the process of making amends could once again be expanded, since the State could now provide financial redress to victims of political persecution that Law No. 6,683 had been unable to restitute – paying compensation for the harm caused to thousands of people through the use of discretionary power, although this was not necessarily related to the suffering experienced by the victim.

Organized into five chapters, the law (which was considered highly satisfactory by the victims of political persecution) guarantees the following amnesty rights: the declaration of the status of political amnesty recipient; financial reparations; assurance, for all official purposes, that the period of time in which they were forced to stop their professional activities due to punishment or threat of punishment will count as valid; the conclusion of courses interrupted due to punishment or the validation of diplomas obtained by those who completed courses at teaching institutes outside the country; and the right to reinstatement for punished civil servants and public employees. In the sole paragraph of article 1, the law guarantees those who were removed from their jobs by administrative cases, based on emergency legislation, without the right to contest the case or defend themselves, and prevented from knowing the motives and grounds for the decision, reinstatement to their positions (due to the age of the claimants, this reinstatement has occurred, in practice, in retirement). The law also lists in detail all the punishments that entitle victims to the status of recipients of political amnesty, and it states that financial reparations, provided for in chapter III, may be paid in two different ways: in a single installment, consisting of the payment of 30 times the minimum monthly wage per year of punishment for those who cannot prove an employment relationship, and whose value may not, under any circumstances, exceed 100,000 *reais*; or in permanent and continuous monthly installments, guaranteed to those who can prove an employment relationship. According to the law, each victim of political persecution has the right to receive the outstanding amounts up until five years before the date of their request claiming amnesty.

Since it was installed in Brasília, the Amnesty Commission, established to review claims for political amnesty and compensation filed by people who were prevented from working for exclusively political reasons, has received more than 80,000 claims. Data from January 2011 reveal that the commission has already judged 66,400 cases. Of this total, 35,000 were granted and the rest were denied.

Among the claims that were accepted, more than half were granted without any form of financial reparations (BRASIL, 2009a). An assessment of the process made in the first half of 2010 indicated that the government has disbursed 2.4 billion *reais* in reparations to these victims – in some cases, reparations for a single victim of political persecution exceed the figure of a million *reais* (LUIZ, 2011). In all the approved cases, the recognition of the status of political amnesty recipient is made official in the same way that it occurred during the dictatorship, i.e., by publishing the name of each recipient in the Federal Gazette.

6 The indifference of society and the shift in political meaning

While the struggle for amnesty involved a large part of society, the same cannot be said about the claims surrounding the obligations of the democratic State or the rights of the victims of the military regime, issues that did not mobilize – or, it would seem, even interest – the majority of Brazilians. Recalling that the main goal of the amnesty in 1979 was to forget the "excesses" committed during the military regime, this was indeed the very outcome that befell those who were directly involved in the matter, albeit for different reasons:

> *Permanently frightened by the possibility of reconstituting the past, the military is still the most intent on not remembering the abuses that occurred after 1964, demonstrating that even now they have not been able to forget. Similarly, the enduring need to remember – prompted by grievances never redressed, truths left unknown and a desire for this kind of suffering never to be repeated – has denied the victims of the regime and their families the possibility of ever forgetting. Remaining disconnected from the debate, impassive, is society. In fact, it seems to be alone in having managed to embrace forgetfulness.*
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> (MEZAROBBA, 2006, p. 150-151).

Therefore, since the initial spirit of conciliation expressed in the Amnesty Law and reiterated in the two subsequent laws was maintained, new political meanings were conferred upon the process of making amends. This is evident when looking at the three main stages of this process, guided basically by federal legislation (the Amnesty Law of 1979, the Law of the Disappeared of 1995 and Law No. 10,559 of 2002): "From its initial spirit of pragmatic conciliation, we can observe that the amnesty saw its meaning evolve into an acknowledgement of the responsibility of the State for serious human rights violations and then into financial reparations for the losses suffered by victims of political persecution" (MEZAROBBA, 2006, p. 150). From the information covered so far, therefore, it is clear from the approach taken by the Brazilian State that the main investment in justice has been made in the administrative arena, through the creation of the two commissions, and geared primarily towards financial compensation. Moreover, the initiatives originated in the Executive branch and were developed with the support of the Legislature. Concerning the duty to identify, prosecute and punish the perpetrators of human rights violations, very little has been done thus far, which explains the almost complete absence of the Judiciary in the national process of making amends.

7 The lack of punishment

The first recorded case of the Amnesty Law being applied to prevent the punishment of crimes committed by the dictatorship occurred in April 1980, when the Superior Military Court (STM) heard a case calling for the punishment of three torturers who had blinded a political prisoner, four years previously. The case was dismissed as groundless, despite the fact that the violence perpetrated against the prisoner had been established in the proceedings and recognized by the military prosecutor and by the court itself. Even though no one has yet been convicted for crimes committed by the regime, the Brazilian State has been held legally responsible on numerous occasions for the imprisonment, torture, death or disappearance of the victims of political persecution. The first time was in 1978, in the case involving the illegal imprisonment of journalist Vladimir Herzog. Since it did not ensure his physical and moral integrity, the federal government was required to compensate his widow and children for material and moral damages resulting from his death. Other similar court rulings would follow, all of them recognizing the civil liability of the State. Never the criminal liability of its agents. In fact, the Brazilian courts have heard very few cases involving criminal liability. As far as is known, court cases testing the limits of the amnesty law in this respect were extremely rare, demonstrating not only the lack of confidence of the victims and their families in the legal system, but also how the climate of forgetfulness and impunity fostered by the military managed to restrain those affected by the violence of the regime. There is no doubt that certain peculiarities of the Brazilian legal system have contributed to this situation. For example, torture and murder in Brazil are treated as "crimes of public initiative", meaning that only Public Prosecutor's Office can file criminal cases for these crimes.

In June 2008, an attempt to punish crimes of the dictatorship began to be developed by the Public Prosecutor's Office, after a federal prosecutor from the city of Uruguaiana, in southern Brazil, filed a request for the Federal Police to open an inquiry to investigate the kidnapping and disappearance, in 1980, of a left wing Italian-Argentine militant and an Argentine priest, in the border region of Brazil and Argentina, and the alleged involvement of both civilian and military agents of the dictatorship. The crimes were purportedly committed as part of Operation Condor and for years have been under investigation by the Italian justice department, which has already indicted a number of members of the Brazilian repressive apparatus and is calling for the suspects to be prosecuted. The case is still pending. Not long afterwards, in October of the same year, the retired colonel Carlos Alberto Brilhante Ustra was found responsible for kidnapping and torture during the military regime, in a case brought by five members of the Telles family. This was the first official recognition, by the Brazilian State, that a high-ranking military official had effectively participated in acts of torture against civilians. Tried in a civil court, this declaratory judgment case sought recognition of the occurrence of torture

and, therefore, of the existence of moral damages and damages for violation of physical integrity, but it does not imply any punishment or monetary compensation. The ruling was given by a trial court, and may be appealed.

Practically unquestioned throughout all these years in trial courts, the Amnesty Law finally began to be challenged towards the end of the 2000s not in one, but in two (high) courts: Brazil's Federal Supreme Court and the Inter-American Court of Human Rights. On the national level, it all started in the second half of 2008, when the Brazilian Bar Association filed a motion with the Federal Supreme Court, questioning the validity of amnesty for agents of the State who had committed human rights violations during the dictatorship. In the motion, the association asked the Supreme Court for a clearer interpretation of article 1 of the law, and claimed that the amnesty granted to the perpetrators of "political and connected crimes" does not extend to public agents accused of common crimes such as rape, forced disappearance and murder. Drawing on supposedly historic arguments, the reporting justice Eros Grau claimed that the Judicial branch was not in a position to review the political agreement that had resulted in the amnesty. Six justices voted in the same way and the other two opposed the interpretation. The decision was harshly criticized by human rights organizations both inside and outside Brazil.

In March 2009, the Inter-American Commission on Human Rights (IACHR), of the Organization of American States, referred the Araguaia Guerilla case against Brazil to the Inter-American Court of Human Rights. Ever since the dictatorship, relatives of the victims had been applying for access to the records of repression against this guerilla movement. In 1982, several families filed a liability case in court against the Brazilian State, to clarify the circumstances surrounding the deaths of these opponents of the regime and the whereabouts of their remains. After exhausting all available domestic remedies, the families decided in 2001 to appeal to the IACHR. In its referral, the commission asked the court to determine the international responsibility of the Brazilian State for its failure to meet a number of obligations, namely the right to personal integrity and the right to life. The commission also noted the possibility of the court determining the Amnesty Law incompatible with the American Convention on Human Rights, as a result of the serious human rights violations. On December 14, 2010, the court published its ruling on the case, declaring the country responsible for the forced disappearance of 62 people between 1972 and 1974, in the region known as Araguaia. Based on international law and on its own case law, the court concluded that the provisions of the Amnesty Law that prevented the investigation and punishment of serious human rights violations are incompatible with the American Convention and have no legal grounding. It ruled that the law must not continue to be used as an obstacle blocking either the investigation of the facts or the identification and punishment of those responsible. While it recognized and applauded of the efforts at reparation made by Brazil, the court determined, among other things, that the State not only reveal the truth about the crimes, but also criminally investigate the facts of the case.[6]

8 The right to reveal the truth

In addition to not fulfilling its duty to provide justice, the incompleteness of the process of making amends to victims of the military dictatorship by the Brazilian State also involves the duty to reveal the truth, which has only recently been addressed more substantively, although still not in full. As we know, a truth commission was never installed in Brazil to look into the human rights violations committed during the regime. For more than two decades, the main effort in this respect was limited to the development of a single unofficial project: *Brasil: nunca mais* (Brazil: never again), executed by a group of human rights defenders under the leadership of the then Cardinal Archbishop of São Paulo, Dom Paulo Evaristo Arns, and the Reverend Jaime Wright, and under the sponsorship of the World Council of Churches. The project began to be developed shortly after the approval of Law No. 6,683, in 1979, when lawyers representing political prisoners and those in exile were given access to STM files, in order to prepare amnesty claims for their clients. To guarantee a lasting record of the terror practiced by the State, these human rights defenders began to photocopy as many military court cases as they could. Three years later, practically all the files had been copied. More than a million pages had been catalogued, representing nearly all the political cases (707 in full and dozens of others in part) that passed through the military justice system between April 1964 and March 1979 (ARNS, 1985, p. 22). Released in July 1985 by the Archdiocese of São Paulo, the book *Brasil: nunca mais*, which was soon to be published in it 20th edition and become one of the best-selling books in the history of the country, reports on the repressive system, the subversion of the law and the different forms of torture that political prisoners were subjected to during the dictatorship.

The first official initiative to expose the atrocities committed during the period only began to take shape in 2007, during the second term of President Luiz Inácio Lula da Silva, himself a recipient of political amnesty, with the launch of the book *Direito à memória e à verdade* (Right to memory and to truth). The result of 11 years of work by the Special Commission on Political Deaths and Disappearances, it is the first official report by the Brazilian State to accuse members of the security forces for crimes such as torture, rape, dismemberment, decapitation, concealing bodies and murder of opponents to the regime who were already imprisoned and, therefore, unable to react. The book, which has approximately 500 pages and documents the activities of the commission, had been widely anticipated since at least 2004 and was only completed after Paulo Vannuchi was appointed Special Secretary for Human Rights. A journalist, former political prisoner and one of the authors of *Brasil: nunca mais*, Vannuchi completed the book with the help of two other writers. "We now have an official publication with the stamp of the federal government, which incorporates the version of the victims," said the secretary when the book was launched (DANTAS, 2004, p.10; BRASIL, 2007a, p. 17, 2007b; MERLINO, 2007).

Intended as a report and critical even of the Lula da Silva government, the book explains how the work of the commission refuted the official versions

claiming that the victims had been killed while trying to escape, in exchanges of fire, or that they had committed suicide. The investigations managed to prove that the absolute majority of opponents had been arrested, tortured and killed. Highly critical of the amnesty, the book also refers to "State terror", claiming that the victims "died fighting as political opponents of a regime that was born violating the constitutional democracy" and explains the need for the military, particularly those who participated directly in the operations, to reveal the truth that has been hidden for years. "Their formal testimony to the high command would no doubt unravel mysteries and contradictions, permitting the remains of the bodies to be effectively located." (BRASIL, 2007a, p. 27, 30). The project *Direito à memória e à verdade* was accompanied by a photographic exhibition called "The dictatorship in Brazil 1964-1985". Over the past few years, memorials entitled "Indispensible People" have been inaugurated – panels and sculptures that restore some of the history of the political dead and disappeared.

In relation to the archives of the dictatorship, which began to be opened after the first democratically elected president took office, in the early 1990s, some gradual but important progress has been made. In May 2009, acknowledging its obligation to reveal the truth to Brazilian society, the federal government launched the online project Revealed Memories, otherwise known as the Reference Center for the Political Struggles in Brazil (1964-1985), to make information available on the recent political history of the country. The records are stored online in a national network under the supervision of the National Archives, an institution that reports to the Office of the Chief of Staff of the Presidency of the Republic. For some years now, these archives have included documentation produced by the National Intelligence Service (SNI), the National Security Council (CSN) and the General Commission of Investigations (CGI), which used to be controlled by the Brazilian Intelligence Agency (ABIN). Thousands of secret documents drawn up between 1964 and 1975 by the Ministry of Foreign Relations and by the Federal Police are also now preserved in the National Archives. However, the existence and whereabouts of the files documenting the activities of the main protagonists of the regime's violence – the Armed Forces – remain unknown.

9 The reform of the institutions

If there is still much to be done to fulfill the duty of providing truth and justice, then also still pending is the duty of the Brazilian State to reform key institutions, to make them democratic and accountable. While there can be no doubt as to the important progress that has been made since redemocratization, particularly in the social and economic areas, there are still problems, for example, concerning respect for civil rights, which can be illustrated by the not only high, but in some cases also rising, rates of violence. Tragic evidence of this is that torture continues to be used against prisoners in police stations and prisons across the country. Although it was employed long before the military regime, throughout Brazilian

history, the dictatorship relished in its refinement of torture, and the practice persists to this day, even after Law No. 9,455 codified the crime of torture in 1997 – only going to confirm that the transition to democracy has not, in itself, been sufficient to shut the door definitively on the country's repressive past. In addition to the impunity and the threat it represents in relation to future abuses, Brazil is also a clear example of a country that has been unable to shake off the legacy of authoritarianism built over the course of the regime. Although Law No. 9.299 was sanctioned in 1996, transferring from military to civil courts the jurisdiction to judge military police accused of "felonies against life", legislation such as the National Security Law still persists. This law is extremely authoritarian and is incompatible with the Brazilian Constitution of 1988, but it remains in force in direct conflict with democratic ideals.

And even though the creation of the Ministry of Defense, in 1999, imposed some form of civilian control over the Armed Forces, no significant reform has been made of the national security system, which was also not purged after the dictatorship. As a result, it is not rare to read in the press about cases, usually based on charges made by human rights groups, of notorious torturers from the regime who continue to work in police stations or government offices, or who even plan to run for elected office. Until now, and unlike what has happened in Argentina and Chile, for example, no official apology has been made by the Brazilian military. Although the practice of torture during the regime has been progressively admitted by military officials, albeit inaccurately as isolated acts by a few rogue officers and not as a policy of the State, the more than 25 years of democracy in Brazil has still not been long enough for the Armed Forces to publicly express regret for the crimes committed after 1964. In general, the military have pulled together, expressing no regret, and very often putting up barriers to hold back the process of making amends. The most recent example of the difficulty this group has in dealing with the crimes of the past occurred in the second half of 2009, during a debate on the possibility of creating a truth commission. The teaching of human rights in military academies also continues to be a delicate issue.

Nevertheless, more generally speaking, it is possible to note that not only have important initiatives been developed since the return to democracy, but the issue of human rights appears to be gradually turning into a policy of the State, regardless of the differing ideological positions of the leaders presiding over the country. The process of bringing Brazil into the folds of the international human rights protection system began during the government of José Sarney, who signed, in September 1985, the Convention Against Torture and Other Cruel and Degrading Treatment. His successor, Fernando Collor de Mello, became the first Brazilian president to emphasize the role of the international community in monitoring human rights, in a speech given at the annual opening of the United Nations General Assembly, in 1990, and he was also the first to officially receive to the country a delegation of Amnesty International (ALMEIDA, 2002, p. 16). Unlike Sarney, whose term was marked by the unconditional defense of the sovereignty of the Brazilian State, Collor refused to use this to cover up

human rights violations (ALMEIDA, 2002, p. 62). Accordingly, after circular letter no. 9,867, of November 8, 1990, the Ministry of Foreign Relations began to advise its staff about the government's new position to no longer deny the facts, but instead, whenever necessary, to acknowledge human rights violations and demonstrate that the government was committed to investigating them (ALMEIDA, 2002, p. 87, 122).

In response to a recommendation of the Declaration and Programme of Action of the United Nations World Conference on Human Rights (whose writing committee was chaired by Brazil), held in Vienna, the country instituted its first National Human Rights Program (PNDH) in 1996, with an emphasis on assuring civil and political rights. Foremost among the numerous goals, put into practice upon its implementation, are the creation of the National Witness Protection System and the demolition of the Carandiru prison, in São Paulo, which rose to infamy in the first half of the 1990s after a massacre that culminated in the death of more than 100 inmates and turned the prison into a symbol of disrespect for human rights. Shortly afterwards, the National Bureau of Human Rights was created within the purview of the Ministry of Justice. The first PNDH was reviewed and updated in 2002, in response to demands from social movements that called for its expansion. The PNDH II incorporated economic, social and cultural rights (BRASIL, 2008, 2009).

Early in the first term of the Lula da Silva administration, in 2003, the name of this bureau was changed to the Special Bureau of Human Rights and, together with the Special Bureau of Policies for the Promotion of Racial Equality and the Special Bureau of Policies for Women, acquired ministerial status. Five years later, after the 11th National Human Rights Conference, Brazil embarked on a process to review and update the two previous PNDHs, with 137 meetings held in advance of the state-level stage, involving nearly 14,000 participants, namely representatives of organized civil society and the public authorities. Structured around six central principles (one of them dedicated to the right to memory and to truth; another to human rights education and culture), subdivided into 25 guidelines and more than 80 strategic goals, the PNDH III is based on the 700 resolutions of the 11th Conference and on countless other proposals from Thematic National Conferences and from federal government plans and programs, in addition to international treaties ratified by Brazil and recommendations made by the UN Treaty Monitoring Committees and their special rapporteurs (BRASIL, 2009b). It was launched by the President of the Republic on December 10, 2009, in the midst of much controversy. Towards the end of 2010, Brazil ratified the International Convention for the Protection of All Persons from Forced Disappearance. And early in 2011, the National Congress began to debate bill no. 7,376/2010[7], sent by the Executive branch, which should finally institute a National Truth Commission to examine and shed light on the serious human rights violations committed during the military dictatorship.

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NOTES

1. The full text of Law No. 6,683 is available (in Portuguese) at: <http://www.planalto.gov.br/ccivil_03/Leis/L6683.htm>.

2. Interview given by the former president of Brazil José Sarney to Glenda Mezarobba on August 23, 2007.

3. Interview given by the former president of Brazil José Sarney to Glenda Mezarobba on August 23, 2007.

4. The full text of Law No. 9,140 is available (in Portuguese) at: <http://www.planalto.gov.br/ccivil_03/Leis/L9140.htm>.

5. The full text of Law No. 10,559 is available (in Portuguese) at: <http://www.planalto.gov.br/ccivil_03/Leis/2002/L10559.htm>.

6. The official text of the ruling is available (in Portuguese) at: <http://www.corteidh.or.cr/docs/casos/articulos/seriec_219_esp.pdf>.

7. The full text of Bill No. 7,376/2010 can be found (in Portuguese) at: <http://www.camara.gov.br/internet/sileg/Prop_Detalhe.asp?id=478193>.

RESUMO

Este artigo reconstitui e analisa o processo de acerto de contas desenvolvido pelo Estado brasileiro junto às vítimas da ditadura e a sociedade. Começa recordando a natureza e a forma de repressão utilizada pelo regime militar (1964-1985), faz uma breve caracterização da ditadura propriamente dita e do processo de redemocratização e trata dos mecanismos de justiça de transição adotados pelo Brasil. Como a ênfase, no país, foi dada ao esforço reparatório, trata das indenizações pagas pelas duas comissões administrativas criadas com essa finalidade. Também analisa o que foi feito e o que ainda falta fazer em relação aos deveres de verdade e justiça e no que diz respeito à reforma das instituições.

PALAVRAS-CHAVE

Anistia – Brasil - Direitos humanos - Ditadura militar - Justiça de transição

RESUMEN

Este artículo reconstruye y analiza el proceso de ajuste de cuentas llevado a cabo por el Estado brasileño frente a víctimas de la dictadura y frente a la sociedad en su conjunto. Comienza recordando la naturaleza y la forma de represión utilizada por el régimen militar (1964-1985), caracteriza brevemente la dictadura propiamente dicha, así como el proceso de redemocratización, y aborda los mecanismos de justicia transicional adoptados por Brasil. Ya que el énfasis, en el país, ha sido puesto en el esfuerzo de reparación, el artículo trata de las indemnizaciones abonadas por las dos comisiones administrativas creadas con tal finalidad: la Comisión Especial sobre Muertos y Desaparecidos Políticos y la Comisión de Amnistía. También analiza lo que ha sido hecho y lo que todavía falta hacer con relación a los deberes de verdad y justicia, y con respecto a la reforma de las instituciones.

PALABRAS CLAVE

Amnistía – Brasil – Derechos humanos – Dictadura militar – Justicia transicional