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Emmanuel Frías Sampaio

Politics of Memory of the Recent Past in Brazil

The Federal Government's Role in Constructing Collective Memory Between 2003 and 2016

LATMA, The Master's Programme in Human Rights and
Democratisation in Latin American and the Caribbean

EMMANUEL FRÍAS SAMPAIO

POLITICS OF MEMORY OF THE RECENT PAST IN BRAZIL:
THE FEDERAL GOVERNMENT'S ROLE IN CONSTRUCTING
COLLECTIVE MEMORY BETWEEN 2003 AND 2016

FOREWORD

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This publication includes the thesis *Politics of Memory of the Recent Past in Brazil: The Federal Government's Role in Constructing Collective Memory Between 2003 and 2016* written by Emmanuel Frías Sampaio, supervised by Ana De Maio, University of Buenos Aires and translated from the original *Políticas de la memoria sobre el pasado reciente en Brasil: el rol del gobierno federal en la construcción de la memoria colectiva entre 2003 y 2016* by Kirsty Walter for EUROTRAD snc.

BIOGRAPHY

Emmanuel is a lawyer and Master in Human Rights and Democratisation. He acted as a voluntary university advisor in lawsuits involving the right to the city, as well as the right of indigenous peoples and quilombola communities. Researcher in constitutional law and human rights, with an emphasis on transitional justice.

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ABSTRACT

Towards the end of the 2010s, the Brazilian federal government once again made discussions about the recent past – regarding the military regime that occurred between 1964 and 1985 – public. This time, however, these discussions are characterized by its revisionism and negationism, with an outlook opposing that built by successive governments in the time since the democratic transition in the country. Beginning with an attempt to understand some of the factors that led to the current scenario, this thesis describes and analyses the politics of memory about the recent past that were promoted by the federal government between 2003 and 2016, during the mandates of the Workers Party (PT), regarding its role in shaping the collective memory in the country. To do this, I studied the historical background research on redemocratization in Brazil and the first public politics of memory between 1985 and 2002. I then focused specifically on the politics of memory during the period under investigation, to finish with an examination the institutional peculiarities in the Brazilian case, made clear in presidential speeches and in internal disputes. This provides a picture of these politics, and the collective memory they created.

I used a descriptive qualitative methodology to write this thesis. Although official documents and journalistic sources were the main basis for this research, I used variety of available sources of data and information. This allowed me to undertake an analysis of primary sources – namely laws, decrees, administrative acts, programs, reports, publications, and presidential speeches – linked to the federal government's action on memory policies. I also had access to various bibliographical collections and research background on the subject addressed, in addition to two interviews. The main question that I sought to answer in this research was: what role did the politics of memory from the federal government between 2003 and 2016 play in constructing memory of the recent past in Brazil?

Keywords: politics of memory, transitional justice, collective memory

TABLE OF ABBREVIATIONS

ABAP	Brazilian Association of the Politically Amnestied (<i>Associação Brasileira dos Anistiados Políticos</i>)
ABI	Brazilian Press Association (<i>Associação Brasileira de Imprensa</i>)
ABIN	Brazilian Intelligence Agency (<i>Agência Brasileira de Inteligência</i>)
ACHR	American Convention on Human Rights
ADCT	Act of Transitional Constitutional Provisions (<i>Ato das Disposições Constitucionais Transitórias</i>)
ADPF	Allegation of Disobedience of Fundamental Precept (<i>Arguição de Descumprimento de Preceito Fundamental</i>)
AGU	Attorney-General of the Union (<i>Advocacia-Geral da União</i>)
ANPUH	Brazilian National History Association (<i>Associação Nacional de História</i>)
ARENA	National Renewal Alliance (<i>Aliança Renovadora Nacional</i>)
CBA	Brazilian Committees for Amnesty (<i>Comitê(s) Brasileiro(s) pela Anistia</i>)
CDHM	Human Rights and Minorities Committee of the Chamber of Deputies (<i>Comissão de Direitos Humanos e Minorias da Câmara dos Deputados</i>)
CEMDP	Special Commission on Political Deaths and Disappearances (<i>Comissão Especial sobre Mortos e Desaparecidos Políticos</i>)
Cenimar	Navy Information Centre (<i>Centro de Informação da Marinha</i>)
CF/1988	1988 Constitution of the Federative Republic of Brazil (<i>Constituição da República Federativa do Brasil de 1988</i>)
CGI	General Investigations Commission (<i>Comissão Geral de Investigações</i>)
CGU	Comptroller-General of the Union (<i>Controladoria-Geral da União</i>)

POLITICS OF MEMORY OF THE RECENT PAST IN BRAZIL

CIA	United States Central Intelligence Agency
CIE	Army Information Centre (<i>Centro de Informação do Exército</i>)
CISA	Aeronautical Security Information Centre (<i>Centro de Informação de Segurança da Aeronáutica</i>)
CNBB	Brazilian Episcopal Conference (<i>Conferência Nacional dos Bispos do Brasil</i>)
CNV	National Truth Commission (<i>Comissão Nacional da Verdade</i>)
CONADEP	National Commission on the Disappearance of Persons (Argentina) (<i>Comisión Nacional sobre la Desaparición de Personas</i>)
DEOPS/SP	São Paulo State Department of Political and Social Order (<i>Departamento Estadual de Ordem Política e Social de São Paulo</i>)
DOI-CODI	Information Operations Detachment-Centre for Internal Defence Operations (<i>Destacamento de Operações de Informações – Centro de Operações de Defesa Interna</i>)
DOPS	Department of Political and Social Order (<i>Departamento de Ordem Política e Social</i>)
END	National Defence Strategy (<i>Estratégia Nacional de Defesa</i>)
FHC	Fernando Henrique Cardoso
GTA	Araguaia Work Group (<i>Grupo de Trabalho Araguaia</i>)
IACHR	Inter-American Commission on Human Rights
ICC	International Criminal Court
ICTJ	International Center for Transitional Justice
IEVE	Institute of Research into State Violence (<i>Instituto de Estudo da Violência do Estado</i>)
IHR Court	Inter-American Court of Human Rights
IPPHR	MERCOSUR Institute of Public Policies on Human Rights (<i>Instituto de Políticas Públicas en Derechos Humanos del MERCOSUR</i>)
LAI	Law of Access to Information (<i>Lei de Acesso à Informação</i>)
MD	Ministry of Defence (<i>Ministério da Defesa</i>)
MDB	Brazilian Democratic Movement (<i>Movimento Democrático Brasileiro</i>)
MDH	Ministry of Human Rights (<i>Ministério dos Direitos Humanos</i>)

MFPA	Women's Movement for Amnesty (<i>Movimento Feminino pela Anistia</i>)
MJ	Ministry of Justice (<i>Ministério da Justiça</i>)
MJSP	Ministry of Justice and Public Security (<i>Ministério da Justiça e da Segurança Pública</i>)
MMFDH	Ministry of Women, Families and Human Rights (<i>Ministério da Mulher, da Família e dos Direitos Humanos</i>)
MPF	Federal Public Ministry (<i>Ministério Público Federal</i>)
OAB	Brazilian Bar Association (<i>Ordem dos Advogados do Brasil</i>)
OHCHR	Office of the United Nations High Commissioner for Human Rights
PCdoB	Communist Party of Brazil (<i>Partido Comunista do Brasil</i>)
PF	Federal police (<i>Polícia Federal</i>)
PFDC	Federal Prosecutor of Citizen Rights (<i>Procuradoria Federal dos Direitos do Cidadão</i>)
PMDB	Brazilian Democratic Movement Party (<i>Partido do Movimento Democrático Brasileiro</i>)
PNDH	National Programme for Human Rights (<i>Programa Nacional de Direitos Humanos</i>)
PT	Workers Party (Brazil) (<i>Partido dos Trabalhadores</i>)
SDH/PR	Special Secretariat of Human Rights of the Presidency of the Republic (<i>Secretaria Especial de Direitos Humanos da Presidência da República</i>)
SNI	National Information Service (<i>Serviço Nacional de Informações</i>)
STF	Supreme Federal Court (<i>Supremo Tribunal Federal</i>)
UFMG	Minas Gerais Federal University (<i>Universidade Federal de Minas Gerais</i>)
UFSC	Santa Catarina Federal University (<i>Universidade Federal de Santa Catarina</i>)
UNDP	United Nations Development Programme
UNE	National Union of Students (União Nacional dos Estudantes)
UNHRC ECOSOC	United Nations Human Rights Commission governed by the Economic and Social Council

TABLE OF CONTENTS

Foreword	II
Biography	IV
Abstract	V
Table of abbreviations	VI
INTRODUCTION	1
1. An outline of the issue at hand and the research objectives	1
2. Methodology	5
1. RESEARCH BACKGROUND AND THEORETICAL-CONCEPTUAL FRAMEWORK	7
1.1. Research background	7
1.2. Theoretical framework and conceptual definitions	10
1.3. Global and inter-American regulatory framework	21
2. THE PATH TO IMPLEMENTING POLICIES ON MEMORY OF THE RECENT PAST IN BRAZIL	30
2.1. Political transition during the 1970s and 1980s: from amnesty to redemocratization	30
2.2. The State assumes a role: the establishment of reparations commissions	38
3. POLICIES ON MEMORY: ACTIONS TAKEN BY FEDERAL ENTITIES AND AGENCIES BETWEEN 2003 AND 2016	48
3.1. Special Commission on Political Deaths and Disappearances (CEMDP)	50
3.2. Amnesty Commission	55
3.2.1. Resolution No 1: the National Policy for the Promotion of Transitional Justice and Political Amnesty	58
3.2.2. Amnesty Caravans	60
3.2.3. Marks of Memory	62
3.2.4. Testimony Clinics	65
3.2.5. Memorial of Brazilian Political Amnesty	69

3.3. Presidency of the Republic and State Ministries	72
3.3.1. Presidency of the Republic	72
3.3.1.1. Document management	73
3.3.1.2. Searching for bodies in the Araguaia	77
3.3.1.3. Third National Programme for Human Rights (PNDH-3)	81
3.3.2. Ministry of Human Rights	83
3.4. National Truth Commission (CNV)	85
4. POLITICS OF MEMORY: PRESIDENTIAL SPEECHES, INTERNAL DEBATES AND THE ‘MEMORY OF THE VICTORS’	93
4.1. Presidential speeches	94
4.1.1. Lula da Silva and national unity	94
4.1.2. Dilma and the search for the truth	101
4.2. Internal disagreements	109
4.2.1. The Amnesty Law, the PNDH-3, and the impasse in Justice	110
4.2.2. The National Truth Commission and the apex of the ‘theory of two demons’	117
4.3. The ‘memory of the vanquished’ versus the ‘memory of the victors’	122
CONCLUSION	139
BIBLIOGRAPHY	146
APPENDIX	160
LIST OF FIGURES	
<i>Figure 1: Activities supported under the ‘Marks of Memory’ project between 2010 and 2013</i>	64
<i>Figure 2: Final recommendations from the National Truth Commission (CNV) of Brazil</i>	87
<i>Figure 3: Changes made to PNDH-3 directives after institutional disputes and verbal attacks on memory and truth policies:</i>	115
<i>Figure 4: Mockup comparing the covers of the two reports, Brasil: Nunca Mais (1985) and Brasil: Sempre (1986)</i>	125

INTRODUCTION

1. AN OUTLINE OF THE ISSUE AT HAND AND THE RESEARCH OBJECTIVES

Since Jair Bolsonaro was elected as President of the Republic in 2018, there have been profound changes to Brazil's policies on human rights, and on memory and Transitional Justice in relation to the recent past. These changes stem from the political turning points within the country and the region over the last few years.¹

Against that background, there has been increasing interest specifically in examining how such a turning point affects politics of memory. The aim of the present study is therefore to analyse the public politics of memory promoted and implemented under the '*Petista*' governments of Luiz Inácio Lula da Silva and Dilma Rousseff (2003-2016) which, under the official position of today's (2020) government bodies, are considered the subject of controversy.

The specific objectives are therefore:

- 1) to describe and analyse the state politics of memory implemented during the transitional governments and the creation of reparations commissions;
- 2) to study and describe the actions taken by federal bodies and agencies as part of Brazilian politics of memory between 2003 and 2016;
- 3) to analyse the politics of memory implemented and/or proposed in presidential speeches under the *Petista* governments² examining internal disputes;
- 4) to identify the clash between the 'memory of the vanquished' and the 'memory of the victors' which has emerged and intensified in recent years in Brazil.

¹ Calderón F, 'Una inflexión histórica. Cambio político y situación socioinstitucional en América Latina' (2008) 96 Revista de la CEPAL 121.

² The term '*Petistas*' comes from 'PT', the initialism used to refer to the Brazilian Workers' Party, which, as indicated, governed Brazil between 2003 and 2016.

The objectives and the issues set out here - in observation of the historic policy-making process for politics of memory in the public governmental agenda - arose from asking the following questions: Which politics of memories concerning the recent past did the Brazilian federal government endorse and implement between 2003 and 2016? How did the process for developing those policies begin in Brazil? For what reasons and motives did the Lula da Silva administration not deal directly in matters of Transitional Justice (memory and truth) during his first term in office? Which internal conflicts of interest did federal government politics of memory generate? In what way do the speeches of both presidents during the period studied address the subject of memory and endorse (and advance) politics (and policies)³ concerning it? Which collective memory could be overlooked as a result of the politics of memory implemented by the *Petista* governments?

In order to achieve the aims set forth, this work begins with my own academic background research on the subject, the result of my participation from 2013 to 2018 in a research group at the Rio Grande do Sul Federal University. The group was called *Constitucionalismo na América Latina* (formerly *Constitucionalismo e Justiça de Transição na América Latina*) and was coordinated by Professor Roberta Baggio (Amnesty Commission member, 2007-2016). In 2015, I presented a scientific initiation study entitled '*A Teoria dos Dois Demônios no contexto da transição democrática brasileira pós-ditadura: efeitos e possibilidades de enfrentamento à luz do Direito de Resistência*'. Likewise, the results obtained in that work led me to complete my degree thesis: *A presença do discurso denominado 'teoria dos dois demônios' no cenário institucional brasileiro entre as décadas de 1970 a 2010 e suas consequências na inacabada justiça de transição no Brasil*, which I defended in 2018.

The present study therefore intends to describe and analyse the politics of memory of the recent past pushed by the Brazilian federal

³ In the original version of this thesis, defended and published in Spanish, I used the term 'políticas de la memoria'. There are, in principle, no differences between 'politics' and 'policies' in that language (and also in Portuguese, which is my native language), with 'políticas' being used to refer to both politics and policies. Thus, in this translated version, I preferred to alternate between these terms. Most frequently, I use 'politics of memory', the term found most commonly in the literature on this subject, because I refer not only to specific and concrete policies on memory and truth, but also to projects, speeches or public events that - although not exactly policies on memory - I understand as constituting politics within a wider process of 'politics of memory' in Brazil, shaping social memory in some way. For this reason, I go on to use 'policies' when referring to the concrete implementation of policies on memory.

government between 2003 and 2016. While the first substantial federal initiatives relating to memory and what is referred to as Transitional Justice were begun during the Fernando Henrique Cardoso governments (1995-2003) - the highlights of which were the creation of the CEMDP in 1995 and the Amnesty Commission in 2001⁴ - I was interested in analysing the role of the governments between 2003 and 2016 for the following reasons: 1) to include governments headed by the Workers' Party (PT), which was set up towards the end of the civil-military dictatorship; its members included those persecuted by the military regime in the past, among them contemporaneous presidents Luiz Inácio Lula da Silva (2003-2011) and Dilma Rousseff (2011-2016); 2) to look at governments which, in pursuit of and driven by demands for social measures from human rights organizations (for example, the families of victims of the dictatorship), initiated discussions for setting up a commission for the truth about the recent past (under Lula da Silva), successfully created such a body, and put it into operation (under Rousseff); 3) to address a period of growth in the government agenda of and public discussion about memories of the recent past, giving particular attention to multiple initiatives and actions concerning memory endorsed by the Amnesty Commission which, accordingly, led to a systematic change in 2007; and finally, 4) to present what I consider the last period of the Transitional Justice process in Brazil (as regards the 1964 dictatorship), leaving the continuation of politics of memory of the recent past uncertain.

Although there are various studies linked to Brazil's Transitional Justice and politics and policies on memory (and on truth and justice) - many of them addressed here - there is space for a study that focuses on the institutionalization of politics on memory during the *Petista* era, one which discusses the limits and perspectives such policies have tackled.

The reason for this work is the historic issue of "pacted transitions" occurring throughout the last century in South America.⁵ It finds its vivid expression in Brazil's 1985 transition from military dictatorship to democratic government and in the state policies around the issue that have arisen since that time. Within a historic period that we can

⁴ I address the background research into the creation of both commissions in chapter 2.

⁵ Guillermo O'Donnell, Philippe Schmitter & Laurence Whitehead, *Transiciones desde gobiernos autoritarios. Conclusiones tentativas sobre democracias inciertas* (Paidós, Buenos Aires 1998).

refer to as the first phase of Transitional Justice in Brazil, the regime drew up a bill which led to the passing of the Amnesty Law in 1979. The regime itself had been pursuing a 'slow, gradual and secure' opening process since 1974, in response to heightened social pressure to liberate political prisoners in the country. A second phase of Transitional Justice saw the promulgation of a new Federal Constitution in 1988, which remains active today (2020). It paved the way for redemocratization in the country. There are also the 1990s and the years leading up to 2002, punctuated by the creation of the Special Commission on Political Deaths and Disappearances (1995) and the Amnesty Commission (2001).

This work was feasible because it marked a historic moment, from the Brazilian federal government's perspective: what I refer to as the third (and possibly last) period of Transitional Justice in the country. During this time, there was a strong government focus on pushing policies for reparations (mainly in terms of continuing and deepening the Amnesty Commission's work) and for truth (in particular, the creation of the Truth Commission in 2011). However, as we will see later on, the period also saw the emergence of clashes around the issue of memory, which transcend an absence of progress in terms of justice. While there have been state efforts to conclude the Transitional Justice process in Brazil - coming from the Amnesty Commission in particular - various factors are analysed in the present thesis (some relating to state institutionalization) that became an obstacle to success in that area.

This study is viable in that it proposes an examination of documents and of public and official declarations in relation to the matter at hand. These documents and declarations were issued under the PT's federal government, by the presidents of the Republic during that period and by institutional authorities. Further, it considers the various examples of background research that have looked into the creation and operation of the public policies examined in this work.

The study begins by asserting that democratic progress is not possible without first consolidating collective memory of the country's history. It looks at this specifically with regard to the last civil-military dictatorship, in order to examine the extent to which politics of memory between 2003 and 2016 (whose aims were to overcome the legacy of authoritarian rule) achieved their objectives. In that way, it is possible to get a better glimpse of one of the aspects that impacted how democracy is perceived in Brazil and the aforementioned political changes that have taken place in the last decade.

2. METHODOLOGY

To write this thesis, and with the aim of meeting the proposed research objectives, a qualitative descriptive methodology was chosen, this being a type of research used to identify the features of an existing phenomenon.⁶

This research strategy was centred on the analysis of official documents (laws, decrees, administrative acts, programmes, reports, publications and presidential speeches) and journalistic sources relating to the matter at hand. With the aim of understanding how politics of memory were implemented from within the structure of federal government, as well as the conflicts and internal disputes that arose around that matter, the proposed method was to look at those politics by examining the speeches and debates that led to actions that would shape the collective memory. The decision to study some of the speeches given by presidents Lula da Silva and Dilma Rousseff was part of a research strategy that treated the speeches as if they were official documents, due the scarcity of information on what was achieved. It should also be noted that this strategy allowed for a more substantial analysis of institutionalization in the post-dictatorship era (for example, previous reforms) and of the disputes then and now about the recent past and collective memory.

This thesis also analyses official speeches and state documents (such as legislation, plans and programmes), available on the Brazilian State's website and occasionally through other media (virtual and physical), as well as journalistic publications and other primary and secondary sources, such as public inquiries into democracy in the country and interviews with public authorities from the period being studied, who are considered experts on the subject.

The thesis is structured into four chapters, which follow on from this introduction. The first chapter compiles the research background into politics of memory in Brazil and the key concepts for building a theoretical and regulatory framework. The second chapter is a retrospective account of the origins of the politics of memory that were introduced between the end of the military regime and the year 2002. It notes civil society's role in driving those politics, and also highlights the

⁶ Neil J. Salkind, *Métodos de investigación* (Prentice Hall, México 1999) 11 (back translation: ES>EN).

establishment and work of the main commissions for memory in Brazil during that period: the CEMDP and the Amnesty Commission.

The third and fourth chapters take a more direct approach to the thesis topic: politics of memory of the recent past that the Brazilian federal government endorsed between 2003 and 2016. Specifically, the third chapter focuses on the work of entities which operate in matters of memory and Transitional Justice: those already in existence at the start of Lula's government and those created during the period in question. It also looks at policies created by the presidential and ministerial branches of the federal government. The fourth chapter instead focuses on the speeches and on institutional disputes generated by politics of memory. It seeks to analyse the extent to which presidential speeches promoting politics of memory successfully achieved their aims, focusing on the 'memories of the politics', as well as situating politics of memory within a larger debate in Brazilian society: this I call memories *versus* 'anti-memories'. Finally, a brief conclusion returns to what each chapter has addressed, linking it back to the objectives and questions posed for the research project, summarising the position that memories of the recent past - of and in Brazil - occupy in the current landscape, and signposting possible future lines of research around the topic.

1.

RESEARCH BACKGROUND AND THEORETICAL-
CONCEPTUAL FRAMEWORK

1.1. RESEARCH BACKGROUND

In Brazil, it is possible to find various studies on democracy, memory, truth and Transitional Justice since the last dictatorship, as the Brazilian State actually distributed some of these works as official publications.⁷ These were all useful for the present thesis. They include official publications as well as previous research on the creation of the reparations and memory commissions and their work. Using existing research to construct a state of the art, we focus on those works that reference the Brazilian transition and some of the public policies chosen for this thesis. It was particularly difficult to find works studying the possible barriers to the Transitional Justice process in Brazil, which paralysed that process in the second half of the 2010s.

Marcelo Torelly published a comprehensive study focusing on the Transitional Justice process in Brazil, beginning with a conceptual framework and progressing towards a focus on each of the pillars of that process.⁸ That author serves as a secondary resource when looking at the emergence and evolution of politics of memory in Brazil, highlighted during the analysis of reparations.

⁷ The official publications, which range from academic texts on the topic to others written specifically for each publication, include the following works by the Amnesty Commission (among others): *Repressão e Memória Política no Contexto Ibero-Brasileiro* (2010), written in collaboration with the Coimbra University Centre for Social Studies; *Justiça de Transição: Manual para a América Latina* (2011), written in collaboration with the International Center for Transitional Justice; *A Anistia na Era da Responsabilização* (2011), written in collaboration with the University of Oxford's Latin American Centre; *Anistia* journals; as well as publications arranged by the Commission, for example, the book *Justiça de Transição: Direito à Justiça, à Memória e à Verdade* (2014). The following chapters use the works mentioned, and the background their texts provide, as secondary sources of research.

⁸ Marcelo Dalmás Torelly, *Justiça de Transição e Estado Constitucional de Direito: Perspectiva Teórico-Comparativa e Análise do Caso Brasileiro* (Fórum, Belo Horizonte 2012).

The work of Marcos Napolitano is considered when looking at the social history perspective. It gives a broad analysis of the social construction of memory under the Brazilian military regime, divided into four stages: the first, from 1964 to 1974 (which the author skips over); the second, from 1974 to 1994 ('the construction of critical memory'); the third, from 1995 to 2004 ('memory laws and state policy'); and the fourth and most recent, from 2013 to 2014 ('ideological and historiographical revisionism').⁹ Just as in Napolitano's text, the present work analyses memory from the 1970s to the 2010s, with a focus on the years between 2003 and 2016. A further key text is the work of Benito Bisso Schmidt¹⁰. It reconstructs what he calls the 'battles for memory'. These began during the final period of the dictatorship, with the demand from sectors of civil society for 'wide, general and unrestricted' amnesty, and lasted until the beginning of Lula's first government. Schmidt recalls the wave of national memory which began in the 1990s (with celebrations that took place in 2000 in the lead up to the 500th anniversary of Brazil's 'discovery'), lasting until the 40th anniversary of the 1964 coup (in 2004). There is also a look at Mateus Henrique de Faria Pereira's brief analysis of the 'battles for memory' with regard to the Truth Commission in Brazil.¹¹

The following works then fed into the background research: Mariano Cerruti, Juan Manuel Domínguez Rotta and Matías Tapia on post-dictatorship human rights policies in Brazil and the role of the armed forces;¹² Rafael Schincariol for background on the creation of the National Truth Commission;¹³ Elson Mattos Tavares da Silva with regard to places of memory in Brazil's and Argentina's transitions;¹⁴ Suellen Neto Pires

⁹ Marcos Napolitano, 'Recordar é vencer: as dinâmicas e vicissitudes da construção da memória sobre o regime militar brasileiro' (November 2015) 8(15) *Antíteses* (Universidade Estadual de Londrina, Londrina) 9.

¹⁰ Benito Bisso Schmidt, 'Cicatriz aberta ou página virada? Lembrar e esquecer o golpe de 1964 quarenta anos depois' (2007) 14(26) *Anos 90* (UFRGS, Porto Alegre) 127.

¹¹ Mateus Henrique Pereira, 'Nova direita? Guerra de memória em tempos de Comissão da Verdade (2012-2014)' (September/December 2015) 31(57) *Varia Historia* (Belo Horizonte) 863.

¹² Mariano Cerruti, Juan Manuel Domínguez Rotta & Matías Tapia, 'Fuerzas Armadas y Derechos Humanos en Brasil: ¿Una asignatura pendiente?' (IV Seminario Internacional Políticas de la Memoria – "Ampliación del campo de los Derechos Humanos: Memorias y Perspectivas", mesa 22, Buenos Aires 2011).

¹³ Rafael L Schincariol, 'A Comissão da Verdade no Brasil' (IV Seminario Internacional Políticas de la Memoria – "Ampliación del campo de los Derechos Humanos: Memorias y Perspectivas", mesa 22, Buenos Aires 2011).

¹⁴ Elson Mattos Tavares da Silva, 'Da Ditadura à Democracia: Os lugares da memória na transição política no Brasil e na Argentina' (IX Seminario Internacional Políticas de la Memoria – "40 años del golpe cívico militar: reflexiones desde el presente", Buenos Aires 2016).

Maciel who provides an article regarding archives and documents from the dictatorship period;¹⁵ and Marleide Ferreira Rocha who studies the Amnesty Caravans (a topic on which I place greater focus in point 3.2.2 of this work).¹⁶

I also consider articles such as those by Marilena Deschamps Silveira¹⁷ and Ana Paula Brito¹⁸ as research background dealing specifically with policies on memory. Respectively, they look at the ‘Testimony Clinics’ project and policies on places of memory in Brazil. Further, I consider recent research that evaluates the implementation and legacy of the National Truth Commission in Brazil, since it published its final report: this includes the works of João Batista Teófilo,¹⁹ Torelly,²⁰ and Gisele Iecker de Almeida & Nina Schneider.²¹

In a general sense, the research addressed fits into the analysis carried out in more detail over the next chapters. It remains, then, to investigate whether the politics of memory promoted by the federal government - particularly during the Lula da Silva and Rousseff administrations (2003-2016) - they were able to establish a social or collective memory of the recent past in conjunction with the existing ‘memories of the politics’, and then whether they were able to consolidate that as the reigning memory of the military dictatorship in Brazil, thus avoiding that reconciliation become a process aligned with oblivion, amnesia and the grey zone, or even with negationism and revisionism.

¹⁵ Suellen Neto Pires Maciel, ‘La experiencia traumática brasileña: notas para una reflexión inicial sobre los desafíos de la memoria y del trabajo con los documentos’ (IX Seminario Internacional Políticas de la Memoria – “40 años del golpe cívico militar: reflexiones desde el presente”, Buenos Aires 2016).

¹⁶ Marleide Ferreira Rocha, ‘Caravanas da Anistia: espaço público de testemunho das vítimas do terrorismo de Estado brasileiro’ (XI Seminario Internacional Políticas de la Memoria – “Memorias Subalternas, Memorias Rebeldes”, Buenos Aires 2018).

¹⁷ Marilena Deschamps Silveira, ‘Clínicas do Testemunho: reparação psíquica e construção de memórias’ (September/December 2017) 4(3) Revista Memorare – “Especial dossiê Marcas da Memória: direitos humanos, justiça de transição e anistia” 94.

¹⁸ Ana Paula Brito, ‘Rompiendo el silencio institucionalizado en Brasil: los memoriales sobre la dictadura y las políticas públicas de memoria’ (June 2018) 8(16) Aletheia.

¹⁹ João Batista Teófilo Silva, ‘A Comissão Nacional da Verdade e os desafios e limites para a “justiça de transição” no Brasil’ (2016) 12 Revista Angelus Novus 81.

²⁰ Marcelo Dalmás Torelly, ‘Assessing a Late Truth Commission: Challenges and Achievements of the Brazilian National Truth Commission’ (2018) 12(2) International Journal of Transitional Justice 194.

²¹ Gisele Iecker Almeida & Nina Schneider, ‘The Brazilian National Truth Commission (2012–2014) as a State-Commissioned History Project’ in B Bevernage & N Wouters (eds), *The Palgrave Handbook of State-Sponsored History After 1945* (Palgrave Macmillan, Ghent 2018) 637.

1.2. THEORETICAL FRAMEWORK AND CONCEPTUAL DEFINITIONS

In the second half of the 20th century, Latin America and, more specifically, South America, faced an onslaught of authoritarian regimes. For the most part, they were civil-military dictatorships, acting under what is today known as Operation Condor. This was an agreement between the United States Central Intelligence Agency (CIA) and the Southern Cone's national governments.²² In terms of policies, these governments mostly followed doctrines with a strong emphasis on national security²³ and state terrorism,²⁴ conducting the systematic persecution of political opposers, political imprisonment, disappearances, torture and assassinations.

In Argentina, it was the political, economic and societal collapse that brought an end to the dictatorship;²⁵ in Brazil, the end came as a result of institutional negotiations, but not without pressure from a public unhappy with the regime. The ways of tackling redemocratization were, however, totally different across the region.

The difficulty of providing a definition for how democracy worked in each South American country (beyond the general concept) is required before a definition can be given of their authoritarian rule. Norberto Bobbio covers the historiography and extracts the sociological and juridical perspectives. He suggests that democracy is a classic typification, a means of naming one of the many forms of government within a State.²⁶ It is exercised by the people, or by a majority, or by large numbers, meaning it can even be called upon by a military dictatorship

²² Stella Calloni, 'Introducción' in BG Real (ed), *Operación Cóndor - 40 años después* (UNESCO, Buenos Aires 2016) XXXIX.

²³ 'National Security is when the State gives the Nation the power to impose its objectives upon all opposition forces. That power naturally becomes forceful and the State becomes one that is able to defeat all opposing forces and ensure that its National Objectives are met' (Joseph Comblin, *A Ideologia de Segurança Nacional: O Poder Militar na América Latina* (trad. de AV Fialho, *Civilização Brasileira*, Rio de Janeiro 1980) 54 (twice translated: PT>ES>EN)).

²⁴ According to Ana De Maio's definition, State terrorism is 'the government's systematic and illegal use of threats and recrimination to force the population into obedience and active collaboration' (Ana De Maio, 'Los conceptos de defensa y seguridad, y su implicancia en el fortalecimiento de los derechos humanos' (MNational Defense thesis, Escuela de Defensa Nacional-Instituto Universitario del Ejército, Ministerio de Defensa, Buenos Aires 2013, Mime) 30) (translation: ES>EN).

²⁵ Carlos Santiago Nino, *Juicio al mal absoluto* (trad. de M Bohmer, Ariel, Buenos Aires 2006) 105.

²⁶ Norberto Bobbio, *Estado, Governo, Sociedade. Para uma teoria geral da política* (14^a ed., trad. de MA Nogueira, Paz e Terra, Rio de Janeiro 2007) 135, 137.

presenting itself as a virtuous form of government²⁷ - this was the case during the last dictatorship in Brazil.²⁸ In contrast, ‘dictatorship’ is the agreed antithesis to democracy (favoured over older terms such as ‘despotism’, ‘tyranny’ or ‘autocracy’). It has negative connotations when used to refer to an authoritarian regime.²⁹

With regard to the transition³⁰ in Brazil, after the most recent military regime, the theoretical debate seeks to establish the extent to which the young post-1985 democracy succeeded in establishing itself by and large as a democracy that was just as or more democratic than the so-called ‘Populist Republic’ in the period that preceded the 1964 coup (1945-1964). Also discussed is whether the current democracy was born inherently fragile and with traces of dictatorship, due to the institutional political pact that brought a ‘slow, gradual and secure’ end to the civil-military dictatorship,³¹ through indirect elections in

²⁷ ‘Dictatorships, despotic States with irresponsible figures at the helm, and recently formed States run by exclusive, undemocratic oligarchies, all call upon representative democracy or justify their hold on power as necessary on a temporary basis, in order to re-establish the disturbed order and get past the anarchic transition period. They call themselves an interim government in a state of emergency and, as such, claim not to be a rejection of the democratic system but a suspension *pro tempore*, with the prospect of a return to normality, or the unfinished application of the principles set out in formally approved constitutions, but absorbed too quickly by the ruling classes formed in the West and imposed upon countries without a tradition of self-rule and political struggle to have their civil rights recognised’ (Bobbio (n. 26), 119 (twice translated: PT>ES>EN)).

²⁸ In his acceptance speech, the first dictator in Brazil’s military period, Humberto de Alencar Castelo Branco (1964), asserted that he was hoping to ‘hand over, at the beginning of 1966, to a successor legitimately elected by the public in free elections, a united Nation more confident than ever in its future, no longer hounded by the fears and harrowing problems they currently face.’ That never happened. (Humberto Alencar de Castelo Branco, *Discurso de Posse*, Biblioteca da Presidência da República (11 April 1964) <www.biblioteca.presidencia.gov.br/presidencia/ex-presidentes/castello-branco/discursos/discurso-de-posse/discurso-de-posse/view> accessed 15 July 2019).

²⁹ Bobbio (n 26), 158-61.

³⁰ ‘Transitions are defined, on the one hand, as the beginning of the process of dissolving an authoritarian regime and, on the other, as the establishment of some form of democracy, the return to some kind of authoritarian regime, or the emergence of a revolutionary alternative. The main characteristic of transition is that, during the process, the rules of the political game are undefined. Not only are they in constant flux, but they are generally also the subject of arduous contest [...]’ (Guillermo O’Donnell, Philippe Schmitter & Laurence Whitehead, *Transiciones desde gobiernos autoritarios. Conclusiones tentativas sobre democracias inciertas* (Paidós, Buenos Aires 1998) 19-20 (translation: ES>EN)).

³¹ In this work, I alternate between the terms ‘civil-military dictatorship’ and ‘military regime’ in reference to the 1964 regime. While the first indicates the ‘complex relations between dictatorship and society’, highlighting ‘complicity [between] civil sectors including the working classes’ and the regime (Daniel Aarão Reis Filho, ‘Historiador rebate mitos sobre o golpe de 1964’, Folha de S. Paulo (30 March 2019) <www1.folha.uol.com.br/ilustrissima/2019/03/historiador-rebate-mitos-sobre-o-golpe-de-1964.shtml> accessed 13 July 2019), the second takes into account that ‘the successive crises of the era were resolved by military force and the progressive institutionalisation of repressive tools also demonstrates the regime’s military nature’ (Carlos Fico, ‘Versões e controvérsias sobre 1964 e a ditadura militar’ (2004) 24(47) *Revista Brasileira de História* 52), which is demonstrated by the fact that the military factions of the coup remained in power after 1966, as mentioned above (n 28) (both references twice translated: PT>ES>EN).

National Congress³² before a non-exclusive constituent assembly process between 1987 and 1988.³³ With reference to the relationship between democracy and the State in Brazil, Baggio and Peixoto address recent data that points towards a general mistrust of democracy among the Brazilian population. This leads to scepticism towards the State that is in fact caused by its weak provision of favourable economic conditions and security:

By and large, it seems to be the case that Brazilians believe in neither democracy nor in authoritarianism. The shortcomings of the Brazilian State - whether under democratic or authoritarian rule - in providing certain basic economic conditions and security measures, seems to instil in the average Brazilian a general mistrust of the State, regardless of the regime in place.³⁴

With regard to the Latin American crisis of State, in the 1990s O'Donnell³⁵ was already referring to '[the] reduction in personal incomes, limited career prospects, poor working conditions, hostile political landscape and, at the same time, endless state interventions' as 'the ideal breeding ground for corruption to grow'. In fact, corruption had already become a buzzword linked to the limited understanding of democracy in Brazil: according to the latest figures from Latinobarómetro, corruption is the Brazilian population's main concern (16%). The population is also among the least supportive of (34%) and least satisfied with (9%) democracy in Latin America.³⁶

³² References to an institutional political pact made among the political elites of the era does not imply the existence of a social pact, much less any pact in the formal sense of the word (Guillermo O'Donnell, 'Acerca del Estado, la Democratización y algunos problemas conceptuales. Una perspectiva Latinoamericana con referencia a países poscomunistas' (1993) 33(130) *Desarrollo Económico* (Instituto de Desarrollo Económico y Social, Buenos Aires) 3), especially taking into account the huge '*Diretas Já*' ('Direct [elections] now') campaign. Driven by sectors and organisations of civil society, it aimed to get the Dante de Oliveira Constitutional Amendment passed, which would lead to the presidential elections, but eventually suffered insufficient votes in its favour in Congress.

³³ Roberta Camineiro Baggio & Rodrigo Luz Peixoto, 'Instabilidade estrutural e ciclos de democracia-ditadura na política brasileira: uma reflexão sobre a política pós-1964' in FC Tassinari, *XXVII Congresso Nacional do CONPEDI: Constituição e Democracia I* (UNISINOS/CONPEDI, Porto Alegre/Florianópolis 2018) 145. 'The definition of the concept of democracy is a common debate in human sciences. One of the main issues in this discussion is how comprehensive is the concept to which it is applied - whether to a 'maximalist' or a 'minimalist' programme, which have more or less demanding requirements, respectively, when it comes to shaping a democracy' (ibid 138 twice translated: PT>ES>EN).

³⁴ ibid 140 (twice translated: PT>ES>EN).

³⁵ O'Donnell (n 32), 19 (translation: ES>EN).

³⁶ Latinobarómetro Corporation, *Informe Latinobarómetro 2018*, Latinobarómetro Database (9 November 2018) <www.latinobarometro.org/latdocs/INFORME_2018_LATINOBAROMETRO.pdf> accessed 12 July 2019.

In countries where the transition to democracy was gradual, processes emerged which were referred to as Transitional Justice, a ‘conception of justice associated with periods of political change, characterised by legal responses to confront the wrongdoings of repressive predecessor regimes.’³⁷ As outlined by Marcelo Torelly, Transitional Justice could be understood from an institutional perspective as a ‘bank of experiences gained in overcoming authoritarianism’, and from an academic perspective as a ‘vast field of research that stands out for its interdisciplinary nature and that focuses on the knowledge and evaluation of these highly complex means for confronting authoritarian legacy’,³⁸ as its development is strongly influenced by the human rights movement to be ‘self-consciously victim-centric’.³⁹

Consensus over the first phase of Transitional Justice on a global level has its origins in the post-war trials. International law plays a strong role⁴⁰ and it links back to the concept of applying criminal law to avoid recurrence of the past. It is therefore characterised by an international and punitive nature, and has its foundations in two of the pillars of Transitional Justice: ‘*reforming the institutions that committed the crimes* and *holding individuals accountable* for crimes committed on behalf of the regime’.⁴¹ The second phase of Transitional Justice took place between 1970 and 1989, coming to an end at the same time as the end of the Cold War, the fall of the Soviet Union and the transition of other military dictatorships in Latin America, it being linked to the (re) construction of nations.⁴² Given the difficulty or even impossibility of bringing State criminals to justice, it focused on new judicial concepts, such as *granting victims reparations* and setting up *truth commissions* as a means of taking responsibility for the past.⁴³ A third phase of Transitional Justice is said to have begun symbolically in 1989, lasting

³⁷ Ruti G. Teitel, ‘Transitional Justice Genealogy’ (2003) 16 Harvard Human Rights Journal (Cambridge) 69 (back translation: ES>EN).

³⁸ Marcelo D Torelly, *Justiça de Transição e Estado Constitucional de Direito: Perspectiva Teórico-Comparativa e Análise do Caso Brasileiro* (Fórum, Belo Horizonte 2012) 106 (twice translated: PT>ES>EN).

³⁹ Louis Bickford, ‘Transitional Justice’ in *The Encyclopedia of Genocide and Crimes Against Humanity*, 3 (MacMillan, New York 2004) 1045.

⁴⁰ Teitel (n 37) 70.

⁴¹ Torelly, ‘Justiça de Transição e Estado Constitucional de Direito’ (n 38) 108-09 (author’s emphasis, twice translated: PT>ES>EN).

⁴² Teitel (n 37) 71.

⁴³ Torelly, ‘Justiça de Transição e Estado Constitucional de Direito’ (n 38) 110.

until the present day.⁴⁴ It is characterised by that field of study becoming more established, beginning with a process for normalising case law and the regulatory framework around it, as well as the creation of the International Criminal Court - ICC.⁴⁵

As Elizabeth Jelin warns us, terms such as ‘Transitional Justice’ and ‘Truth Commission’ were not part of the public or academic debates of the 1980s when democratic transition was taking place in, for example, Argentina and Brazil.⁴⁶ Only with time have the institutional tactics and methods exercised during that period become ‘internationally recognised tools for managing the past in post-dictatorial, post-violence eras’.⁴⁷

It could be the case that Transitional Justice processes in the region were more or less progressive in terms of rights, devoting attention to the four recognised pillars: reparations for victims, regulating justice, carrying out institutional reforms, and promoting memory and the search for the truth.⁴⁸ In Brazil, priority was given to the reparations pillar, with emphasis on public policy in that area, a matter addressed in more detail in Chapters 2 and 3 of this thesis.

Reparations can be considered the central axis of Transitional Justice in Brazil, this being the most thoroughly developed initiative and the impetus for others such as policies on memory and truth.⁴⁹ Paulo Abrão and Marcelo Torelly provide more detail:

⁴⁴ There is an argument that Transitional Justice has lost relevance in Latin America, given how much time has passed since the dictatorships in that region ended and since Transitional Justice policies were first applied. However, the matter has perhaps never been so relevant as it is today, first and foremost for precisely the reasons indicated: the Transitional Justice processes in the Southern Cone were never finished (all four pillars have not been fulfilled) and further, certain discourses have (re)risen to the surface (the ‘theory of two demons’ in Argentina and overt defence of the dictatorial regime in Brazil, for example, addressed in Chapter 4 of this work). As such, we are faced with a need to return to the discussion of the aforementioned matters. To give a more notable example from the second half of the 2010s in the region, the peace agreements in Colombia and the establishment of the Special Jurisdiction for Peace are clear instances of how Transitional Justice remains applicable and ongoing.

⁴⁵ Teitel (n 37), 89-90.

⁴⁶ Elizabeth Jelin, *La lucha por el pasado: cómo construimos la memoria social* (Siglo XXI, Buenos Aires 2017) 47-48 (translation: ES>EN).

⁴⁷ *ibid.*

⁴⁸ Paulo Abrão & Marcelo Dalmás Torelly, ‘As dimensões da Justiça de Transição no Brasil, a eficácia da Lei de Anistia e as alternativas para a verdade e a justiça’ in P Abrão; LA Payne & MD Torelly (eds), *A Anistia na Era da Responsabilização: O Brasil em Perspectiva Internacional e Comparada* (Ministério da Justiça-Comissão de Anistia/Oxford University-Latin American Centre, Brasília/Oxford 2011) 215.

⁴⁹ Torelly, ‘Justiça de Transição e Estado Constitucional de Direito’ (n 38) 261-62.

[...] currently, some of the richest repression-era archives are in the hands of the reparations commissions, which have partnered up to build a historic truth from the point of view of the politically persecuted. If it had not been for the Reparations Commissions created under the Fernando Henrique Cardoso administration, much of the information on the history of repression would not be available to us.⁵⁰

From an integrated perspective on the pillars or principles of Transitional Justice, reparations can be seen as a means of promoting collective memory, particularly in collective symbolic ways, such as ‘public acts of atonement, commemorative days, establishment of museums, changing of street names and other public places, etc.’.⁵¹

On the other hand, in line with historical and sociological studies, a focus on memory deserves its own space, as a field of Transitional Justice but also as an independent driver of the processes of transitioning to democracy, guided by that understanding of what justice is.⁵² With Transitional Justice as a basis, memory can be understood as an integral part of a dual notion with the truth (the truth-memory notion), where

transitional policies have two roles: (i) promoting *historical clarification* on the many events and (ii) promoting *social integration*, as this makes it possible to widen the scope of the narrative on the past. This therefore falls into the perspective of building a *collective memory* that will help what I define as a *democratic common sense*.⁵³

In fact, in agreement with Torelly, the idea of the right to the truth, connected to the right to memory, ‘does not refer to the construction of a *single narrative* but to the need for *various concurrent narratives*

⁵⁰ Abrão & Torelly, ‘Justiça de Transição no Brasil: a dimensão da reparação’ in BS Santos (ed), *Repressão e Memória Política no Contexto Ibero-Brasileiro: estudos sobre Brasil, Guatemala, Moçambique, Peru e Portugal* (Comissão de Anistia do Ministério da Justiça/Universidade de Coimbra, Brasília/Coimbra 2010) 38 (twice translated: PT>ES>EN).

⁵¹ Pablo De Greiff, ‘Justiça e reparações’ (trad. de A Tissot & D Frantz) in F Reátegui (ed), *Justiça de transição: manual para a América Latina* (Comissão de Anistia-Ministério da Justiça/Centro Internacional para a Justiça de Transição, Brasília/Nueva York 2011) 433 [translation taken from <<https://imas2010.files.wordpress.com/2010/07/degreiffpablo-chapter12-justice-and-reparations.pdf>>].

⁵² ‘[...] when referring to Transitional Justice, it is noteworthy that its meaning differs from simply referring to a transition to democracy, as in the latter concept [...] the central focus is on establishing a reasonably democratic electoral system, which itself can lead to confusing the essential requirements for a democracy with the minimum necessary proceedings for carrying out a fair election’ (Torelly, ‘Justiça de Transição e Estado Constitucional de Direito’ (n 38) 106 (twice translated: PT>ES>EN)).

⁵³ Torelly, ‘Justiça de Transição e Estado Constitucional de Direito’ (n 38) 271 (author’s emphasis, twice translated: PT>ES>EN).

to exist in society, which allow the population to see that the past is not just black-and-white, which may eventually lead to the formation of an “official” narrative.’⁵⁴ Similarly, ‘[a] policy on memory that aims to get as close as possible to the historic truth neither can nor should try to suggest there is a reigning memory; rather, it should it should try to encompass the plurality and diversity of existing memories’.⁵⁵

As the main official state tool for truth/memory-seeking after contexts of genocide, civil war and/or political repression, Truth Commissions have been idealised as mechanisms for investigating human rights infringements and evaluating the responsibility of the State, or of civil groups that participated in those contexts. Post-transitional States looking to deal with those responsible for human rights infringements in the past but in which trials are not legally or politically possible have opted for truth commissions ‘with the hope that [they] will lay the foundation for future prosecutions’.⁵⁶

When commenting on the elements of Priscilla Hayner’s definition of truth commissions, Fernanda Nalon Sanglard adds a new one - the communications component, the responsibility of the commissions to encourage debate among the public and in the press:

Truth Commissions (1) are centred around the past of events, rather than the continuation of them; (2) they help to (re)build memories of deep trauma in a specific region; (3) they investigate a pattern of events relating to acts of violence or repression that took place over a period of time; (4) they directly and extensively involve the affected population by gathering information on their experiences; (5) they are temporary entities, aiming to draw up a final report; (6) they are officially authorised or set up by the State; (7) they are separate from government human rights bodies or bodies responsible for judicial inquiries; and (8) they aim to change social understanding through actions that encourage public debate, and stimulate media coverage and cultural reaction.⁵⁷

The first instance of experience in this area was in Uganda back in 1974, with a Commission of Inquiry into the Disappearances of People.

⁵⁴ Torelly, ‘Justiça de Transição e Estado Constitucional de Direito’ (n 38) 268 (twice translated: PT>ES>EN).

⁵⁵ Bruno Groppo, ‘Las políticas de la memoria’ (trad. de AM Barletta) (2002) 11-12 *Sociohistórica* 196 <www.memoria.fahce.unlp.edu.ar/library?a=d&c=arti&d=Ipr3067> accessed 15 July 2019 (translation: ES>EN).

⁵⁶ Eric Wiebelhaus-Brahm, *Truth Commissions and Transitional Societies: The Impact on Human Rights and Democracy* (Routledge, Oxfordshire 2010) 4-5.

⁵⁷ Fernanda Nalon Sanglard, ‘Justiça de Transição, Comissão da Verdade e as Especificidades do Caso Brasileiro’ in MPF (ed), *Justiça de transição, direito à memória e à verdade: boas práticas* (2018) 237 (twice translated: PT>ES>EN).

In Latin America, Bolivia was the first to set up a commission,⁵⁸ but the pioneering model was the National Commission on the Disappearance of Persons (CONADEP) in Argentina in 1983 after the civil-military dictatorship of 1976-1983, which produced a final report titled *Nunca Más* - Never Again.⁵⁹

While trials produce ‘judicial truth’, the truth uncovered by these Commissions can instead be considered ‘historical’. In fact, these Commissions have no jurisdiction in international human rights law, neither do they substitute trials for human rights violations, although the Inter-American Court of Human Rights (IHR Court), for example, cites them as case law.⁶⁰

These commissions play an objective role in the search for the truth about human rights violations in the recent or immediate past. This allows them to contribute to the reconstruction of collective memory within a given population,⁶¹ and generate symbolic reparations for victims. Indirectly, it enables them to help reform the state that perpetrated the violations.⁶²

On the other hand, it is in relation to the policies on memory mentioned by Groppo that it becomes important to understand initiatives for promoting and communicating memories of the recent past, says Nora Rabotnikof. She explains that this is with regard to the enduring relation between memory and politics in remembering authoritarian regimes, taking Argentina as her example. For this purpose, the author distinguishes between ‘memories of politics’ (understood as being

⁵⁸ In Latin America, this is how countries proceeded: in Bolivia (the National Commission for Investigation for Forced Disappearances, set up in 1982, without producing a final report), in Argentina (the aforementioned CONADEP in 1983), in Chile (the National Commission for Truth and Reconciliation, 1990, and the National Commission on Political Imprisonment and Torture, 2003), in El Salvador (the Commission on the Truth for El Salvador, 1991), in Guatemala (the Commission for Historical Clarification, 1994), in Uruguay (the Commission for Peace, 2000), in Peru (the Truth and Reconciliation Commission, also 2000), in Panama (the Truth and Justice Commission, 2003) and in Ecuador (the Truth Commission, 2008). More recently, a new Truth Commission was created in Bolivia in 2017, and in Colombia the Commission for Clarification of the Truth, Coexistence, and Non-Recurrence was set up in 2018.

⁵⁹ Marlon Alberto Weichert, ‘A questão dos desaparecidos políticos no Brasil. Perspectivas com a Comissão Nacional da Verdade’ in Instituto Macuco (ed), *Vala Clandestina de Perus: Desaparecidos Políticos, um capítulo não encerrado da História Brasileira* (Instituto Macuco, São Paulo 2012) 122.

⁶⁰ *ibid.*

⁶¹ Patricia Funes, ‘Nunca Más: memorias de las dictaduras en América Latina. Acerca de las Comisiones de Verdad en el Cono Sur’ in B Groppo & P Flier (eds), *La Imposibilidad del Olvido* (Al Margen, La Plata 2001) 44.

⁶² Weichert (n 59) 125.

‘memories of other memories’), and politics of memory (the means of dealing with a past that the State or public figures have created - the author calls these ‘memory initiatives’):

The term memories of politics refers to the forms and narratives through which the contemporaries of a given period build their memories of a political past, narrate their experiences and articulate - polemically - the past, present and future. And also the views that non-contemporaries of that period build of its politics, using testimonies, memories and documents. In other words, memories of other memories. With politics of memory, we are instead referring to the ways of handling or dealing with that past, through retroactive justice, historical-political trials, the installation of memorials, and setting up of commemorative dates and places, various forms of symbolic appropriations. But politics of memory also refers here to the ‘grand gestures of a sense of time’, or the broader narratives proposed under (and implied by) institutional frameworks. They build different timelines and, in that way, help establish where there are continuities or splits. Politics of memory are not made up solely of official policies (although it is those that have the greater capacity for introducing collective frameworks for society as a whole); various figures acting within the public space also contribute.⁶³

To Bruno Groppo, memory ‘is therefore not a useless luxury or a masochistic action aimed at indefinitely prolonging suffering; rather, it is the opposite, an indispensable condition for trying to understand the current disaster and point oneself in the direction of a less disastrous future’.⁶⁴ In the same vein, he presents policies on memory as follows:

A policy on memory is a deliberate action taken by governments or other political or social figures with the objective of preserving, transmitting or showing the value of certain elements of the past considered particularly significant or important. By offering a representation of the past, it aims - as already mentioned - to sculpt public memory and in that way build a certain type of collective identity. It uses the past to reconstruct it in light of present problems and concerns; although it works on the past, it looks to the future in that it is implicitly sketching out a certain type of society.⁶⁵

⁶³ Nora Rabotnikof, ‘Memoria y política a treinta años del golpe’ in CE Lida; H Crespo & P Y. (eds), *Argentina, 1976. Estudios en torno al golpe de Estado* (Fondo de Cultura Económica, Buenos Aires 2008) 259-61 (translation: ES>EN).

⁶⁴ Groppo (n 55) 188 (translation: ES>EN).

⁶⁵ *ibid* 192.

These policies include ‘remembrance days and rituals, the construction of monuments, preservation of so-called “places of memory”, the establishment of institutions charged with conserving and communicating memory [...] school programmes, place names, etc.’.⁶⁶

Social or collective memory is a concept that originates in the work of Maurice Halbwachs, who said that collective memory, ‘encapsulates individual memories but does not get entangled with them. It develops according to its own laws, and although some individual memories sometimes infiltrate it, they change shape as they find their place in the collective, as this consciousness is not individual.’⁶⁷ On the other hand, in line with his definition of memory as the driver that forms social cohesion, the author indicates that:

For our memories to take assistance from the collective memory, it is not enough that others provide us with testimonies: moreover, it is clear that it continues to coincide with their memories and there are enough aspects in common between one another that the memory they bring us can be rebuilt upon a common foundation. To obtain a memory, it is not enough to simply reconstruct an image of a past event piece by piece. It needs to be rebuilt using the information or common notions found in our minds and in others’ minds, allowing them to pass endlessly between each other. That is only possible if they have been part of and continue to make up that same society.⁶⁸

In post-dictatorship societies, such as in Brazil, ‘memory has a moral duty: it is testament to the moral obligation to those who are no longer around to give their account (the disappeared)’.⁶⁹ Truth, instead, has a judicial dimension. It ‘aims to shed light on crimes, especially those committed by agents of the State, and to locate the bodies of victims of “forced disappearance”’. It also has a historic dimension, ‘defined by the need to narrate and analyse the process of violence. There is a drive to overcome that violence, in a way that reconciles the ethical and methodological demands of historiography - regardless of ideological belief - and the educational function of building a new democratic way of living’.⁷⁰

⁶⁶ Groppo (n 55) 193 (translation: ES>EN).

⁶⁷ Maurice Halbwachs, *La memoria colectiva* (trad. de I Sancho-Arroyo, Prensas Universitarias de Zaragoza, Zaragoza 2004) 54 (translation: ES>EN).

⁶⁸ *ibid* 34.

⁶⁹ Rabortnikof (n 63) 269.

⁷⁰ Napolitano (n 9) 14. (twice translated: PT>ES>EN)

Further, memory aims first and foremost to focus on the victims of authoritarianism, by building their truth and condemning the crimes of the State, ‘to replace the official versions and documents created by the State responsible for the violence or by the political or social groups that supported it’.⁷¹

However, ‘memory initiatives’ - the name I have given to the combination of politics of memory and memories of politics - are confronted by ‘barriers to memory’. These include: *reconciliation as a means*, which is linked to the idea of oblivion;⁷² amnesia,⁷³ the grey zone,⁷⁴ revisionism and negationism.⁷⁵

I understand *reconciliation as a means* specifically as the objective of state authorities and civil sectors to establish a union or achieve national peace, with their eyes ostensibly on the future. It partners with *absolute oblivion* of past events. I differentiate this from the idea of *reconciliation as an end state*. This I understand as being democracy consolidated to the extent that I believe is (within the framework of a representative democracy) a potential objective of democratic transition. It is this that requires the prior and due performance of memory initiatives that seek to capture truths formerly hidden behind state terrorism. Reconciliation as an end state also entails devoting attention to the pillars of Transitional

⁷¹ *ibid* 13 (twice translated: PT>ES>EN).

⁷² José Carlos Moreira da Silva Filho, ‘Memória e reconciliação nacional: o impasse da anistia na inacabada transição democrática brasileira’ in P Abrão, LA Payne, & MD Torelly, *A Anistia na Era da Responsabilização: O Brasil em Perspectiva Internacional e Comparada* (Ministério da Justiça-Comissão de Anistia/Oxford University-Latin American Centre, Brasília/Oxford 2011) 292.

⁷³ Benito Bisso Schmidt, ‘Cicatriz aberta ou página virada? Lembrar e esquecer o golpe de 1964 quarenta anos depois’ (2007) 14(26) *Anos 90* (UFRGS, Porto Alegre) 130; ‘[...] there was some coordination of human rights abuses among military governments in the Southern Cone, Transitional Justice developments in neighbouring countries have kept Brazil’s own past in the public eye. Unlike its neighbours, until recently historical amnesia has prevailed in Brazil, part of the reason why lawlessness continues to be common’ (Wiebelhaus-Brahm (n 56) 53) (back translation: ES>EN); Pâmela de Resende, ‘“O esforço pra lembrar é a vontade de esquecer”: memória e esquecimento na ditadura civil-militar no Brasil’ (IV Seminário Internacional Políticas de la Memoria – “Ampliación del campo de los Derechos Humanos: Memorias y Perspectivas”, Buenos Aires 2011) 1.

⁷⁴ Primo Levi, *Los hundidos y los salvados* (trad. de PG Bedate, Muchnik, Barcelona 2000).

⁷⁵ I have adopted historian Mateus Henrique de Faria Pereira’s concepts. He terms *negation* as ‘a retort to reality, an event or fact that can lead to concealment, falsification, delusion, distortion and confusion’, and *revisionism* as the ‘free interpretation that does not necessarily deny the facts but uses them to justify political fights with the aim of building an “alternative” narrative’, while *negationism* is a ‘radicalization of negation and/or revisionism’, or rather the outright ‘falsification of fact’ (Pereira, ‘Nova direita? Guerra de memória em tempos de Comissão da Verdade (2012-2014)’ (September/December 2015) 31(57) *Varia Historia* (Belo Horizonte) 865-66).

Justice, which allow for: reparations for damage, the regularization of justice, and the reform or substitution of the institutions who perpetrated the violations. All of these are closely connected to the construction of truth and memory.

On the other hand, *absolute oblivion* is also differentiated from *relative oblivion*, which is inherent to memory and possesses selectiveness, retaining ‘some elements of the past, while condemning others to extinction. Selectiveness is a constituent part of memory for the simple reason that we cannot remember everything. In that sense, memory and oblivion are two sides of the same coin and are therefore inseparable’.⁷⁶ When, however, ‘absolute oblivion’ is applied to a recent past, for example, it involves an attempt to condemn an entire set of past events to silence; in other words, it is not necessarily a case of extinction, as the silenced events lie hidden in the individual memory of certain figures, but are under pressure not to emerge as collective memories.

1.3. GLOBAL AND INTER-AMERICAN REGULATORY FRAMEWORK

It can be argued that virtually none of the international documents on the issue of memory are binding upon states around the world. In fact, there is a lack of recognition of memory and truth as rights in the region’s states; neither are they classified under each nation’s legislation. Nevertheless, I believe it is necessary to briefly highlight certain elements about how the treatment of memory and truth has evolved in the official documentation of the global and inter-American human rights systems, in order to find a place for them within a framework of rights. Furthermore, the case law in this area from the inter-American system (IHR Court) is also discussed.

Within the universal human rights system, it is essentially the United Nations (UN) that has produced the standards and reports on the right to memory and the truth. The first international document to refer to a right to the truth is the ‘Protocol I Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts’.⁷⁷ Specifically, in articles 32

⁷⁶ Groppo (n 55) 192; Halbwachs (n 67). (Translation: ES>EN).

⁷⁷ UNCHR, *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, <<https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/ART/470-750039?OpenDocument>> accessed 6 May 2020.

to 34, the document handles the issue of deceased or missing persons, taking the ‘right of families to know the fate of their relatives’ as its general principle (article 32).

Meanwhile, two reports produced by the UN are worth highlighting (the other is the Study on the Right to the Truth, looked at later on). The first, the ‘Final Report on the question of the impunity of perpetrators of human rights violations’,⁷⁸ looks at the right to know, the right to justice, the right to reparations and guarantees of non-recurrence of violations. It defines what is referred to as the ‘right to know’ - also referred to in the report as ‘memory’ - as going beyond the rights of individuals and families to know the truth (which themselves are essential for overcoming the trauma suffered in contexts of human rights violations) and adds the notion that knowing is a collective right. Some of the measures proposed in the report, aimed at promoting the right to know, include the creation of extra-judicial commissions of inquiry and preserving archives relating to human rights violations. It is worth transcribing paragraph 17 - concerning the definition of the right to know - in its entirety:

A. The right to know

17. This is not simply the right of any individual victim or closely related persons to know what happened, as much as it is a right to the truth. The right to know is also a collective right, drawing upon history to prevent violations from recurring in the future. Its corollary is a ‘duty to remember’, which the State must assume, in order to guard against the perversions of history that go under the names of revisionism or negationism; the knowledge of the oppression it has lived through is part of a people’s national heritage and as such must be preserved. These, then, are the main objectives of the right to know as a collective right.⁷⁹

The Report of the Secretary-General of the UN Security Council, ‘The rule of law and transitional justice in conflict and post-conflict societies’, is renowned as providing the main international framework for Transitional Justice and its pillars.⁸⁰ Transitional Justice is defined in

⁷⁸ UNCHR, *Question of the impunity of perpetrators of human rights violations (civil and political) - Revised final report prepared by Mr. Joinet pursuant to Sub-Commission decision 1996/119. E/CN. 4/Sub. 2/1997/20/Rev.1* (2 October 1997) <www.derechos.org/nizkor/impu/joinet2.html> accessed 6 May 2020.

⁷⁹ *ibid* para 17.

⁸⁰ UNSC, *The rule of law and transitional justice in conflict and post-conflict societies*, S/2004/616 (2004).

the document as:

processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof.⁸¹

The same report also defines Truth Commissions as 'official, temporary, non-judicial fact-finding bodies that investigate a pattern of abuses of human rights or humanitarian law committed over a number of years', taking a 'victim-centred approach and conclud[ing] their work with a final report of findings of fact and recommendations'.⁸²

Next, Resolution 2004/72 of what was formerly the Commission on Human Rights of the UN Economic and Social Council (HRC/ECOSOC) on Impunity, notably paragraphs 11 to 14, makes frequent reference to the need for mechanisms promoting truth and reconciliation in contexts where there have been human rights violations. Specifically, paragraphs 12 to 14 encourage the establishment of judicial proceedings and commissions of truth and reconciliation in states where violations have taken place, as well as recognising the role of civil society in combating impunity. In that vein, it recommends that states actively involve civil society in judicial proceedings and in shaping and establishing truth commissions.⁸³

The Commission dedicates an entire chapter of its 'Set of principles for the protection and promotion of human rights through action to combat impunity' to the 'right to know', referred to earlier in the Joint report.⁸⁴ The right to know is made up of a series of general principles: the inalienable right to the truth ('about past events concerning the perpetration of heinous crimes and about the circumstances and reasons that led, through massive or systematic violations, to the perpetration of those crimes'), the duty to preserve memory ('the State's duty to preserve

⁸¹ UNSC (n 80) para 8.

⁸² *ibid* para 50.

⁸³ UNCHR, *Resolution 2004/72, 'Impunity'*, E/CN.4/2004/L.110 (16 April 2004) <<https://digitallibrary.un.org/record/520161?ln=en>> accessed 6 May 2020.

⁸⁴ UNCHR, *Set of principles for the protection and promotion of human rights through action to combat impunity*, E/CN.4/2005/102/Add.1 (8 February 2005) <<https://undocs.org/E/CN.4/2005/102/Add.1>> accessed 6 May 2020

archives and other evidence concerning violations of human rights' and 'preserving the collective memory from extinction and, in particular, at guarding against the development of revisionist and negationist arguments' - invoking the Joinet report) and the victims' right to know ('the truth about the circumstances in which violations took place and, in the event of death or disappearance, the victims' fate'). The document also lays down the principles concerning the establishment and role of truth commissions, the right to justice and the right to guarantees of non-recurrence.

Human Rights Commission Resolution 2005/66, known as 'the Right to the Truth', defined truth as,

the right of victims of gross violations of human rights and serious violations of international humanitarian law, and their families, within the framework of each State's domestic legal system, to know the truth regarding such violations, including the identity of the perpetrators and the causes, facts and circumstances in which such violations took place.⁸⁵

That resolution recognises the right to the truth as being essential to ending impunity, and promoting and protecting human rights. It urges states to create commissions of truth and reconciliation, as well as judicial proceedings whose sole task is to 'investigate and address gross violations of human rights and serious violations' of human rights and of international humanitarian law.

After a request contained in Resolution 2005/66, the Office of the United Nations High Commissioner for Human Rights (OHCHR) produced the 'Study on the right to the truth', which determined that the right to the truth is autonomous and inalienable, and bound to each State's duty to protect and guarantee human rights and to investigate and provide reparations for violations. The report's conclusions and recommendations - specifically, paragraphs 58 and 59 - also make observations concerning the social/collective nature of the right to the truth, invoking a society's right to know.

58. In cases of gross human rights violations - such as torture, extrajudicial executions and enforced disappearance - serious violations of humanitarian law and other crimes under international law, victims and their relatives are entitled to the truth. The right to the truth also

⁸⁵ UNCHR, *Resolution 2005/66 'Right to the truth'*, E/CN.4/RES/2005/66 (20 April 2005) <https://ap.ohchr.org/documents/E/CHR/resolutions/E-CN_4-RES-2005-66.doc> accessed 6 May 2020

has a societal dimension: society has the right to know the truth about past events concerning the perpetration of heinous crimes, as well as the circumstances and the reasons for which aberrant crimes came to be committed, so that such events do not reoccur in the future.

59. The right to the truth implies knowing the full and complete truth as to the events that transpired, their specific circumstances, and who participated in them, including knowing the circumstances in which the violations took place, as well as the reasons for them. In cases of enforced disappearance, missing persons, children abducted or born during the captivity of a mother subjected to enforced disappearance, secret executions and secret burial place, the right to the truth also has a special dimension: to know the fate and whereabouts of the victim.⁸⁶

A symbolic means to this was to proclaim an international day. In UN Human Rights Council Resolution 14/7, 24 March was proclaimed as the 'International Day for the Right to the Truth Concerning Gross Human Rights Violations and for the Dignity of Victims'. Its objectives include 'promoting the memory of victims of gross and systematic human rights violations and the importance of the right to truth and justice'.

The second revision of the report of the Secretary-General of the UN Security Council, 'The rule of law and transitional justice in conflict and post-conflict societies', highlights that 'truth commissions can quickly lose credibility when not properly resourced, planned and managed, thereby undermining the very confidence they are intended to build'.⁸⁷ As such, it recommended that states establish follow-up mechanisms for the work carried out by these commissions, so as to address issues around economic, social and cultural rights:

Unfortunately, Governments have a mixed record of compliance with truth commission recommendations, evidencing the need for follow-up mechanisms, as well as active and long-term political engagement from the international community and civil society. United Nations support for the implementation of recommendations needs to be incorporated early in planning processes. There is growing recognition that truth commissions should also address the economic, social and cultural rights dimensions of conflict to enhance long-term peace and security.⁸⁸

⁸⁶ UNCHR, *Report of the Office of the United Nations High Commissioner for Human Rights pursuant to Commission on Human Rights resolution 2005/66* ('Study on the right to the truth'), E/CN.4/2006/91 (8 February 2006) <<https://undocs.org/en/E/CN.4/2006/91>> accessed 8 May 2020.

⁸⁷ UNSC, *The rule of law and transitional justice in conflict and post-conflict societies*, S/2011/634 (2011) para 24.

⁸⁸ *ibid.*

Going beyond the international system of human rights and delving into the inter-American system, it becomes clear that instances of human rights violations in authoritarian or otherwise extreme circumstances in Latin America run counter to the provisions of article 1.1 of the American Convention on Human Rights (ACHR), in terms of respecting the rights and freedoms that the ACHR recognises, guaranteeing that they may be enjoyed by all persons, without limitation or discrimination. Further, they would violate articles 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty) and 8 (Right to a Fair Trial). As such, Inter-American Court of Human Rights rulings stand out as a means of promoting standards on the right to memory and truth, some of which will briefly be indicated in this text.

Bámaca Velásquez Vs. Guatemala dealt with a victim who was tortured and killed by the Guatemalan State during the country's civil war. Paragraph 77 of the ruling established that

the State has the obligation, according to the general duty set forth in Article 1(1) of the Convention, to ensure that these grave violations do not occur again. Therefore, the State must take all steps necessary to attain this goal. Preventive measures and those against recidivism begin by revealing and recognizing the atrocities of the past, as was ordered by the Court in its judgment on the merits. Society has the right to know the truth regarding such crimes, so as to be capable of preventing them in the future.⁸⁹

In another of the Court's cases, *Villagran-Morales et al. ('Street Children') Vs. Guatemala*, on the minors and young people murdered by the police officers of the Guatemalan State in the 1990s, paragraph 103 is dedicated to the issue of truth.⁹⁰ The Court ordered 'the State to designate an educational center with a name allusive to the young victims in this case [...] This will contribute to raising awareness in order to avoid the repetition of harmful acts such as those that occurred in the instant case and will keep the memory of the victims alive'.

In regard to norms on the right to memory, in *Manuel Cepeda Vargas Vs. Colombia*, the IHR Court required, as a measure of satisfaction, the State to prepare 'a publication and an audiovisual documentary on the

⁸⁹ IHR Court, *Caso Bámaca Velásquez Vs. Guatemala*, Corte Interamericana de Derechos Humanos, Series C No. 70, para 77 (22 February 2002).

⁹⁰ IHR Court, *Villagran-Morales et al. ('Street Children') vs. Guatemala Judgment*, Inter-American Court of Human Rights, Series C No. 63 (19 November 1999).

political life, career in journalism and political role of Senator Cepeda,' and recognised initiatives such as the victim representation initiative as 'significant for the preservation of the memory and satisfaction of the victims, and also for the recovery and re-establishment of the historical memory in a democratic society'.⁹¹ In *Gudiel Álvarez et al* ('*Diario Militar*') *Vs. Guatemala*, regarding forced disappearances during the armed conflict in Guatemala, the Court again imposed the measure of a documentary on the events. This was supported by the same argument that it serves the 'preservation of the memory and the satisfaction of the victims' and 'recovery and re-establishment of the historical memory in a democratic society'.⁹²

An emblematic case in Brazil was that of *Gomes Lund et al*. ('*Guerrilha do Araguaia*') *Vs. Brazil*, ruling on the Brazilian State's actions of torture and forced disappearance against political opposers during the military regime.⁹³ The Court ruled that, as part of its reparations, the Brazilian State 'must carry out a public act of acknowledgment of its international responsibility, in relation with the facts of the present case [...] carried out during a public ceremony, in the presence of high-ranking national authorities and of the victims in the present case' and 'agree on the terms of compliance of the public act of acknowledgment with the victims or their representatives, as well as the particularities required'⁹⁴ and 'the construction of a memorial so the next of kin of the victims can visit it in order to remember the victims and carry out the activities of the day of the politically disappeared in Brazil'⁹⁵ It also laid down measures for: education programmes on human rights within the Armed Forces⁹⁶ access to, systemization of and publication of documents, where within the State's authority⁹⁷ and, most notably, the creation of a truth commission.⁹⁸

⁹¹ IHR Court, *Manuel Cepeda Vargas Vs. Colombia*, Inter-American Court of Human Rights, Series C No. 213 (26 May 2010).

⁹² IHR Court, *Gudiel Álvarez et al* ('*Diario Militar*') *Vs. Guatemala*, Inter-American Court of Human Rights, Series C No. 253 (20 November 2012).

⁹³ IHR Court, *Gomes Lund et al* ('*Guerrilla del Araguaia*') *Vs. Brazil*, Inter-American Court of Human Rights, Series C No. 219 (24 November 2010).

⁹⁴ *ibid* para 227.

⁹⁵ *ibid* para 228.

⁹⁶ *ibid* paras 281-283.

⁹⁷ *ibid* paras 288-293.

⁹⁸ *ibid* paras 294-297.

In *Gelman Vs. Uruguay*,⁹⁹ which recognised the Uruguayan State's responsibility for the disappearance of María Claudia de Gelman during the last Uruguayan dictatorship, the Court imposed various measures on Uruguay, in addition to reparations and non-recurrence assurances, requiring the State to 'carry out a public act of acknowledgment of international responsibility regarding the facts of the current case, addressing the violations established in the present Judgment'.¹⁰⁰ It also ruled that 'the State should unveil, in the SID building where the victims were detained, a plaque containing an inscription with their names, the period of time in which they were illegally detained there'.¹⁰¹

In 2014, the Inter-American Commission on Human Rights (IACHR) published its report 'The Right to Truth in the Americas' which, for example, highlighted the role of truth commissions as contributing 'to the construction and preservation of the historical memory, the elucidation of the facts, and the determination of institutional, social, and political responsibilities during specific historical periods of a society'¹⁰² and recognising that 'the countries of the region have made forward strides in adopting and implementing initiatives aimed at reconstructing and preserving the memory of the historical truth, shedding light on human rights violations, dignifying the victims and reconciling society'.¹⁰³ The IACHR highlighted the value of truth commission archives, which act as a 'guarantor of the voices of the victims; their contribution to the culture of commemoration and memorialization; the assurance they provide against revisionism and denial; and their value to judicial investigations and other mechanisms of transitional justice'.¹⁰⁴

In addition to Inter-American case law, in March 2017 the 'Unit on Memory, Truth and Justice' was created under the IACHR. This took place within the framework of the 'Strategic Plan 2017-2021' and was a result of the conclusion that the matter still held relevance and merited the Commission's close attention, in the interest of seeking to bring an end to still-present cases of impunity in the region, and

⁹⁹ IHR Court, *Caso Gelman Vs. Uruguay*, Inter-American Court of Human Rights, Series C No. 221 (24 February 2011).

¹⁰⁰ *ibid* para 266.

¹⁰¹ *ibid* para 267.

¹⁰² IACHR, *The Right to Truth in the Americas*, OAS/Ser.L/V/II.152 Doc.2, Organization of American States (Washington, 2014) para 130.

¹⁰³ *ibid* 'In this vein, it has been noted: "if the truth is a prior condition for reconciliation, justice is a necessary condition for reconciliation as well as its result"' para 136.

¹⁰⁴ *ibid* para 197.

of promoting historical memory and truth. In October 2017, the first public consultation took place, with participation from civil organizations, which identified priorities for the issue in the region. These included, ‘defining measures and protocols for the preservation, use and sustainability of memory sites; driving national legislation on sites; updating and adopting the IPPHR’s Fundamental Principles of Public Policies on Memory Sites for OAS countries’. The Unit held a second public consultation in February 2019.¹⁰⁵

Another soft law¹⁰⁶ document worth mentioning is the ‘Fundamental Principles of Public Policies on Memory Sites’ published by MERCOSUR’s Institute of Public Policies on Human Rights (IPPHR). Designed to provide ‘guidelines on public policies in [matters of human rights] for MERCOSUR governments to follow’, the document divides the concept of memory sites into four key elements: to serve as evidence of places where human rights violations were committed; as a means of accessing the right to the truth, in terms of knowing what happened; to act as a prompt for collective memory; and as a means of symbolic reparation and assurance of non-recurrence. In addition to establishing general principles, the document also contains specific principles, regarding: preserving the sites of human rights violations; identifying, labelling and determining the content at sites of memory; and the institutional designs of memory sites.¹⁰⁷

Although not binding - with the exception of the judgments of the Inter-American Court - all these standards point to the need for state initiatives and actions built around truth-seeking and preserving memory (truth-memory notion) of violence and conflict in the recent past. This regulatory framework is still under development (as can be seen in the IACHR’s ‘Unit on Memory, Truth and Justice’ initiative), however it is already laying down significant foundations for politics of memory in nations around the world and in the region, including Brazil.

¹⁰⁵ IACHR, *Unidad Memoria, Verdad y Justicia (CIDH) – Consulta Pública*, Organization of American States, <www.oas.org/es/cidh/prensa/comunicados/2019/020B.pdf> (Sucre, 14 February 2019) (translation: ES>EN).

¹⁰⁶ A document or instrument that is non-binding, unlike a law or international treaty (hard law).

¹⁰⁷ MERCOSUR (IPPHR), *Principios Fundamentales para las Políticas Públicas sobre Sitios de Memoria*, Instituto de Políticas Públicas en Derechos Humanos del MERCOSUR (IPPHR) (Buenos Aires, 2012).

2.

THE PATH TO IMPLEMENTING POLICIES ON MEMORY OF
THE RECENT PAST IN BRAZIL2.1. POLITICAL TRANSITION DURING THE 1970s AND 1980s: FROM AMNESTY
TO REDEMOCRATIZATION

On 15 March 1974 Emílio Garrastazu Médici handed over the Presidency of the Republic to Ernesto Geisel. Geisel had been selected through indirect elections in the National Congress, which was controlled by regime party the National Renewal Alliance (ARENA). The new 'President' hailed from the moderate faction formed in 1964 by Humberto de Alencar Castelo Branco, the *Castelistas*. The faction opposed the hard line of Médici and his predecessor Artur da Costa e Silva.¹⁰⁸ That began the 'slow, gradual and secure opening', which Geisel announced during a meeting with the ARENA leadership in August of that year,¹⁰⁹ and progress towards a future - although

¹⁰⁸ Indeed, the presidencies of Costa e Silva (1967-1969) and Médici (1969-1974) were classed as the most politically repressive period of the Brazilian dictatorship (Viviana Krsticevic & Beatriz Affonso, 'A dívida histórica e o Caso Guerrilha do Araguaia na Corte Interamericana de Direitos Humanos impulsionando o direito à verdade e à justiça no Brasil' in P. Abrão P, LA Payne & MD Torelly (eds), *A Anistia na Era da Responsabilização: O Brasil em Perspectiva Internacional e Comparada* (Ministério da Justiça-Comissão de Anistia/Oxford University-Latin American Centre, Brasília/Oxford 2011) 349; Marcos Napolitano, 'Recordar é vencer: as dinâmicas e vicissitudes da construção da memória sobre o regime militar brasileiro' (November 2015) 8(15) *Antíteses* (Universidade Estadual de Londrina, Londrina) 20-21). Events such as the following stand out. The 1968 Institutional Act (AI-5) shut down National Congress indefinitely (it was reopened under AI-16 in 1969), leading to innumerable congressmen forfeiting their mandates and public servants their positions, as well as to the institutionalization of censorship, the suspension of *habeas corpus* in political crime cases, the suspension of innumerable citizens' political rights and an increase in the practices of persecution and torture. AI-5 would not be revoked until 1978.

¹⁰⁹ Ernesto Geisel, *Discurso feito aos dirigentes da ARENA*, Biblioteca da Presidência da República (29 August 1974) <www.biblioteca.presidencia.gov.br/presidencia/ex-presidentes/ernesto-geisel/discursos/1974/17.pdf/view> accessed 15 July 2019.

uncertain and undefined - political opening of the regime, but in which political opposers also continued to be systematically persecuted and executed.¹¹⁰

Meanwhile, the Brazilian Democratic Movement (MDB) - the opposition party permitted from that point in time, which called for amnesty and the creation of a constituent assembly as a means of returning to democracy¹¹¹ - achieved a substantial victory in Congress. In regards to this political milestone, José Carlos Moreira da Silva Filho highlights:

[...] in the year 1974, a process began that would increasingly show up society's dissatisfaction with the continuing military rule. In the elections that took place that year, the victory of the MDB - the controlled opposition party - was highly significant and was, among other factors, down to the heavy involvement of the outlawed Brazilian Communist Party. At that point, almost all organizations that put up an armed resistance to the dictatorial regime had been massacred.¹¹²

In Brazil's case, it is possible to identify a first phase of Transitional Justice. This began as civil organizations and social movements mobilised to end the regime's repressive practices (and to end the regime itself) and to campaign for political amnesty in the late 1970s. Those involved were the MDB, unions, outlawed parties, the Brazilian Bar Association (OAB), branches of the Catholic Church and, above all, organizations such as the Women's Movement for Amnesty (MFPA) - established in 1975, after the I World Conference on Women - and the Brazilian Committees for Amnesty (CBA) - established in 1978 by

¹¹⁰ In 2018, the CIA published a memorandum revealing that Geisel had authorised the then-Head of the National Intelligence Service - and future presidential successor (in 1979) - João Baptista Figueiredo, to continue the state policy of assassinating opposers of the regime, 'but that great care should be taken to make certain that only dangerous subversives were executed' (William Egan Colby, 'Memorandum From Director of Central Intelligence Colby to Secretary of State Kissinger (Foreign Relations of the United States, 1969-1976, Volume E-11, Part 2, Documents On South America, 1973-1976)', *Department of State of USA - Office of the Historian* <<https://history.state.gov/historicaldocuments/frus1969-76/e11p2/d99>>(1974)).

¹¹¹ Douglas Souza Angeli, 'O Movimento Democrático Brasileiro (MDB) e a defesa da constituinte como caminho para a democracia' (XI Seminário de Estudos Históricos - "A democracia ainda é questão: reflexões sobre a ditadura civil-militar e a Comissão Nacional da Verdade", Novo Hamburgo 2013)

¹¹² José Carlos Moreira da Silva Filho, 'O julgamento da ADPF 153 pelo Supremo Tribunal Federal e a inacabada transição democrática brasileira' in F Piovesan & IV Soares, *Direito ao desenvolvimento* (Fórum, São Paulo 2010) 19 (twice translated: PT>ES>EN).

members of the very same MFPA.¹¹³ The demands for a ‘wide, general and unrestricted’ amnesty were the first step on a long path towards redemocratization.¹¹⁴

As a result of the aforementioned context of mobilization - including political prisoners going on a month-long national hunger strike - and amidst the regime’s gradual loss of credibility, the Amnesty Law (Law No 6,683 of 28 August 1979) was passed with controversy. It originated as a bill drawn up by the new ‘moderate-line’ President/dictator João Figueiredo, and passed into law with the fewest possible changes, despite innumerable other more comprehensive bills having been presented by members of Congress who belonged to the MDB or even to ARENA.¹¹⁵ The final text amnestied political and electoral crimes, and other related crimes, but not anyone sentenced for so-called ‘blood crimes’ (‘terrorism, kidnapping, robbery and attacks on individuals’). Given that no officer of the State who had contributed to political persecution, torture or murder was ever condemned for their actions, the most serious of these crimes were only ever classified in law as ‘political crimes’ or ‘connected [crimes]’; as such, they were automatically amnestied. That is to say, in practice, not only was the Law not ‘wide, general and unrestricted’, as the sectors of society demanding amnesty had hoped for, but it consisted of ‘self-amnesty’ for the regime.

¹¹³ ‘The Women’s Movement for Amnesty (MFPA) rose in 1975, among the forces organising against the military regime. It was led by Therezinha Zerbini, a lawyer. The movement did not just pioneer the systematic fight for amnesty: it was also “the first legal movement established in direct opposition to the military regime”. The central hubs of the MFPA soon expanded throughout Brazil and within just that first year of action, their activists had gathered 16,000 signatures on the “Brazilian Women’s Manifesto”, which demanded political amnesty. From that moment, the topic of political amnesty earned a place in the public sphere as a collective force, uniting the different sectors that opposed the military regime. In Rio de Janeiro on 14 February 1978, the Brazilian Committee for Amnesty (CBA) was founded. In addition to several activists in the MFPA, the CBA also brought together students, lawyers, artists, members of the Catholic Church, and aimed to form a connection with oppositionist unions and the representatives of neighbourhood movements. The demand for amnesty was growing further’ (Fabiola Brigante Del Porto, ‘A luta pela anistia no Regime Militar Brasileiro: a constituição da sociedade civil e a construção da cidadania’ (2009) 3 *Revista Fundação Perseu Abramo* 47 (twice translated: PT>ES>EN)).

¹¹⁴ ‘Amnesty in all its forms for all of those politically persecuted and victims of the repression of the time, whether they were prisoners, exiles or similar’ (Emmanuel Frías Sampaio, ‘A presença do discurso denominado “teoria dos dois demônios” no cenário institucional brasileiro entre as décadas de 1970 a 2010 e suas consequências na inacabada justiça de transição no Brasil’ (BLaw thesis, UFRGS, Porto Alegre 2018) 58-59 (twice translated: PT>ES>EN)).

¹¹⁵ Sampaio (n 114) 72; Silva Filho (‘O julgamento da ADPF 153’ (n 112) 24-26) also recalls the arbitrary context of the time: the regime continued its violent practices and subsequent legislative changes to the rules (including the temporary closure of Congress two years earlier), influencing the voting around the Amnesty Law.

Self-amnesty has lasted into the present day (2020), while the rest of the restrictions were lifted only by Constitutional Amendment No. 26, of 27 November 1985.¹¹⁶ Beyond the discussions concerning self-amnesty¹¹⁷ and the place amnesty held in contending with the consequences of institutional ruptures and an authoritarian past,¹¹⁸ amnesty is an instrument valued today for having originated from the popular pressure at the time and as an important stage in the process of transition towards democracy, which eventually led to the 1984-1985 campaign for direct elections, *Diretas Já*.

Barahona points out that Brazil was unlike Argentina, for example, in that during the early stages there were no strong coalitions around the search for truth and justice, despite groups such as the OAB being set up and the creation during that period of groups such as the Catholic Church's Justice and Peace Commissions, the Commission of Relatives of the Dead and Disappeared of the Brazilian Committee for Amnesty and Torture Never Again.¹¹⁹ In fact, the fight for direct elections and for the creation of a constituent assembly became the main banner of the organizations that had previously led the charge for amnesty. In a certain sense, this relegated demands for justice concerning events that took place during the dictatorship into second place.

¹¹⁶ With the aim of following a chronological sequence, chapter 4.2.1 briefly comments on the repercussions of Allegation of Disobedience of Fundamental Precept (ADPF) No. 153, which the Supreme Federal Court (STF) passed in 2010. It ruled that the nature of self-amnesty in the Amnesty Law was constitutional, despite its unconventionality already having been demonstrated in *Barrios Altos vs. Perú* in the Inter-American Court of Human Rights (IHR Court) (2001). Similarly, the term 'amnesty' and the debate around the concept are present throughout the Transition Justice process in Brazil, which is indicated from time to time throughout this work.

¹¹⁷ According to Paulo Abrão, this was a case of amnesty as a means to 'impunity and oblivion', rather than an amnesty of 'freedom and reparations' (Abrão, 'A disputa pelo conceito de anistia no Brasil: de impunidade e esquecimento à liberdade e reparação' in MD Torelly, *Justiça de Transição e Estado Constitucional de Direito: Perspectiva Teórico-Comparativa e Análise do Caso Brasileiro* (Fórum, Belo Horizonte 2012) 23).

¹¹⁸ 'In Brazil, the opposition to the authoritarian regime embraced the process of amnesty as a step towards democracy, rather than considering it a step back. Just as in Spain, amnesty was a vital step towards expanding the political spectrum and the beginning of a clean electoral process in which even the socialist party could participate' (Leigh A. Payne, Paulo Abrão & Marcelo Dalmás Torelly, 'A Anistia na Era da Responsabilização: contexto global, comparativo e introdução ao caso brasileiro' in P Abrão, LA Payne & MD Torelly (eds), *A Anistia na Era da Responsabilização: O Brasil em Perspectiva Internacional e Comparada* (Ministério da Justiça-Comissão de Anistia/Oxford University-Latin American Centre, Brasília/Oxford 2011) 29 (twice translated: PT>ES>EN)).

¹¹⁹ Alexandra Barahona de Brito, 'Truth, Justice, Memory, and Democratization in the Southern Cone' in AB Brito, C González-Enríquez & P Aguilar (eds), *The Politics of Memory: Transitional Justice in Democratizing Societies* (Oxford University Press, New York 2001) 126.

Despite this, *Brasil: Nunca Mais* was published that same year - 1985. It followed Argentina's pioneering experience in 1983, when the CONADEP published the *Nunca Más* report. At that time, *Brasil: Nunca Mais* was the most significant document on the Brazilian military regime, the result of six years of clandestine research, led by the Archdiocese of São Paulo. It contained analysis of over 1 million pages from 707 Superior Military Court trials prosecuting the politically persecuted.¹²⁰ Funes refers to this initiative as an early example of a truth commission,¹²¹ although I prefer to designate it as a form of memory policy set up by a civil organisation,¹²² particularly given the subsequent formation of the National Truth Commission (CNV) as an official organ (recently, in 2011) and the fact that *Brasil: Nunca Mais* did not focus on the testimonies of victims and families - as 'memories of politics' would¹²³ - but on official documents.¹²⁴ In Aguilar's terms, it would be possible to place the work of the Archdiocese of São Paulo as a social/collective memory initiative, rather than one of institutional/official memory:

To me it seems memory can take on a social or collective character as it is shared by the members of a more or less clearly defined group, whose size can vary from very small units - such as a family - to much larger ones - such as a nation [...]. It is worth distinguishing this memory, which we will regardless classify as *collective* or *social*, from *institutional* or *official* memory (although they are not necessarily in opposition to one another). The latter is able to gain more visibility in the public space, it is reflected in monuments and commemorative days; it is driven by politics of memory.

¹²⁰ Dom Paulo Evaristo Arns (org), *Brasil: Nunca Mais* (Vozes, São Paulo 1985) 22-23.

¹²¹ Patricia Funes, 'Nunca Más: memorias de las dictaduras en América Latina. Acerca de las Comisiones de Verdad en el Cono Sur' in B Groppo & P Flier (eds), *La Imposibilidad del Olvido* (Al Margen, La Plata 2001) 46.

¹²² Napolitano (n 108) 15.

¹²³ Nora Rabotnikof, 'Memoria y política a treinta años del golpe' in CE Lida; H Crespo & P Y. (eds), *Argentina, 1976. Estudios en torno al golpe de Estado* (Fondo de Política Económica, Buenos Aires 2008).

¹²⁴ In fact, the report's introduction explains that it worked on the basis that handling official state documents that highlight the regime's governing practices - without counter-evidence or declarations to refute those facts - would constitute 'indisputable proof', in a way that an allegation from a torture victim, that 'does not question government authorities head-on' would not (Arns (n 120) 24). This line of argument seems acceptable to me in the context of a recent political transition which, in 1979 - when the analyses begin - had no confirmed date. In this context, strategies for ending authoritarian regimes in Latin America had recently begun to be rolled out, in the field of Transitional Justice, for example. It was a context that was distant from the politics of memory focused around the victims' testimonies, as addressed later in this thesis (twice translated: PT>ES>EN).

That memory is usually promoted by governments (at various levels) or by the legislative chambers (national or subnational), but may have been introduced into the political agenda by various types of social group. In that way, a memory that would, in principle, belong to the members of a determined group [...] can end up becoming an institutional memory if the decision is taken among the executive or legislative powers to give it official endorsement, taking up the spirit and/or the letter of those groups' demands.¹²⁵

It is worth pointing out the significant impact the 'semi-official' report had, by indicating that all those politically imprisoned by the regime were tortured, as well as the disappearance of 125 people. It also highlights the Brazilian government's decision to sign and ratify the 'Convention against Torture and Other Degrading Treatment' in 1989 - in force from 1991.¹²⁶

The same period also saw a boom in the publication of biographies and autobiographies - 'memories of politics' (in the form of political memoirs) - from former members of the armed resistance. One particular example is *O que é isso companheiro?* (which translates freely as 'What's this, comrade?'), by Fernando Gabeira. It was published in 1979 and later adapted for cinema. Denise Rollemberg and Daniel Aarão Reis Filho attribute the success of the aforementioned book - over innumerable other publications that were not incorporated into the collective memory - 'to the reconciliation within it', as well as for having been written by a 'marginal' character, 'playing a secondary role in the kidnapping of the North American ambassador' - which is a key chapter in the book.¹²⁷ According Rollemberg, a resulting phenomenon would be *memories oblivion*, or not understanding the past, ('a strange - but not a rare - phenomenon that led to an outraged public becoming ignorant of history by learning it'). This allied with the left's struggle 'to confront the issue of society's relationship with the dictatorship which, surprisingly, reinforced the military's will to forget, despite efforts to the contrary - efforts to remember'.¹²⁸

¹²⁵ Marcelo Dalmás Torelly, *Justiça de Transição e Estado Constitucional de Direito: Perspectiva Teórico-Comparativa e Análise do Caso Brasileiro* (Fórum, Belo Horizonte 2012) 276-77.

¹²⁶ Barahona de Brito (n 119) 125.

¹²⁷ Denise Rollemberg, 'O esquecimento das memórias' in JR Martins Filho, *O golpe de 1964 e o regime militar* (UFSCar, São Carlos 2006) 84, 86-87 (twice translated: PT>ES>EN).

¹²⁸ *ibid* 87-88 (twice translated: PT>ES>EN).

In fact, some of the debates in Congress, specifically around the Amnesty Law¹²⁹ and more generally around the collective memory being formed throughout the 1980s, pointed to a moral condemnation of the armed resistance as a political means of opposition to the military regime. Moral condemnation was also aimed at the praise bestowed upon forms of peaceful resistance, ones that opted for political negotiation and garnering consensus. This all contributed to the creation of a sort of *socially acceptable version*,¹³⁰ a *political taboo* under which ‘any rift or dissent among the key figures would further fuel the cycle of violence and broken democracy’.¹³¹ It is also possible to speak of a *paradox of the common victory*, for which amnesty would be a ‘means of allowing the State not to put on trial or punish certain criminal groups, with the understanding that they were a product of abnormal political conflict under whose rule the very concept of criminality was distorted’.¹³² Specifically, crimes committed and then pardoned by the State:

In this way, the Brazilian transition is not just defined as an institutional continuity between the old and the new regime but also as the up-keep of a collection of values that the military sewed throughout the public machine, taking advantage of the consensus they were able to garner with the elites. From there emerges a scenario in which institutional continuity merges with ideological, political, judicial and social continuity, which would later frustrate the State’s efforts to vehemently reject the extremist regime in place between 1964 and 1985.¹³³

As already pointed out, the Dante de Oliveira Constitutional Amendment - that could have led to direct elections back in 1985 - did not manage to gain a large enough backing in Congress, despite social mobilization in its favour. However, the indirect election was won by the Party of the MDB, formed from the remains of the original MDB, the dictatorship-controlled opposition in the two-party system. Ironically, the PMDB presidential candidate Tancredo Neves died just a few days before taking office, leaving his running mate José Sarney to take up the position. Sarney was also of the PMDB but he had connections to

¹²⁹ Brasil, *Anistia, Vol. 1* (Congresso Nacional, Brasília 1982).

¹³⁰ Rabortnikof (n 123) 266.

¹³¹ Napolitano (n 108) 24 (twice translated: PT>ES>EN).

¹³² Torelly, ‘Justiça de Transição e Estado Constitucional de Direito’ (n 125) 185 (twice translated: PT>ES>EN).

¹³³ *ibid* 181 (twice translated: PT>ES>EN).

ARENA, party to which he was affiliated until shortly before the end of the regime. He would remain President until 1990 and the 1989 direct presidential election, the first in the country since 1960.

Considering the various factors that tell of a pacted transition to democracy in Brazil - such as the strong links between the political figures behind the redemocratization and those of the previous regime - beyond the Amnesty Law's original premise of *absolute oblivion* and *national reconciliation as a means* to transition, was the mere consequence that the debate over the immediate dictatorial past was delayed or even non-existent. Above all, no state initiatives (specifically, federal government initiatives) were identified right after the redemocratization that aimed to salvage past events or build some sort of memory of the dictatorship, whether negative or positive.

Still, it is worth mentioning the Federal Constitution of 1988 (CF/1988). Although born of a 'non-exclusive constituent assembly', it broke ground - in a formal sense, at least - by incorporating social rights into the legal system.¹³⁴ This broke away from the Constitution created under the dictatorship in 1967 and from Constitutional Amendment No. 1/1969 which had practically altered the entire previous text. The provisions of the new text and the Act of Transitional Constitutional Provisions (or ADCT, which can be referred to as part two of the CF/1988) included article 8. It sewed the seed for the policies on memory that the Brazilian State would go on to develop in the 2000s: the establishment of a system that granted *political amnesty* as a means of making reparations to private-sector employees, former councillors, civil servants and employees affected by extremist legislation between 1946 and 1988.¹³⁵ Although the primary focus was on pecuniary reparations, political amnesty constituted the first step towards the State recognising the victims as victims, even though the specific organization

¹³⁴ Constitutionalist Giovanni Sartori classifies this as a constitution-catalogue, 'full not just of trivial details such as almost suicidal provisions and promises impossible to keep'; on the other hand, the CF/1988 can be understood as an effort, in the aftermath of authoritarian rule, to offer assurance - in writing at least - of possible institutional rights and guarantees, despite an uncertainty over its coming to fruition. (Roberta Camineiro Baggio, 'Tensionamentos Sociais e Justiça de Transição: contribuições ao constitucionalismo latino-americano' in G Tosi; LFG Ferreira & P Abrão (eds), *Justiça de Transição – Direito à Justiça, à Memória e à Verdade* (UFPB, João Pessoa 2014) 90 (twice translated: PT>ES>EN)).

¹³⁵ 'Imaginary period' ascribed to the dictatorship (1964-1985), beginning with the Third Republic (or 'Populist Republic') of 1946-1964 - after Getúlio Vargas' dictatorship - and lasting until the promulgation of the Federal Constitution in 1988. This is analysed under the next point.

in charge of assessing requests for political amnesty would not be set up until 2001, 13 years later. During that time, other public bodies were responsible for assessing requests for economic reparations and for reinstating victims into the workforce.¹³⁶

2.2. THE STATE ASSUMES A ROLE: THE ESTABLISHMENT OF REPARATIONS COMMISSIONS

In the 1990s, the culture around memory in Brazil took a change of direction. The year 1988 marked 100 years since the abolition of slavery and 1989 marked 100 years since the proclamation of the Republic; the 500-year anniversary of Brazil's 'discovery' was also approaching (in 2000). This led to a *memory wave*. According to Schmidt:

Driven by political redemocratization and the promulgation of a new Constitution, intellectuals and social movements devoted themselves to re-reading Brazilian history. They tried to dismantle consolidated interpretations, to the point that the abolition and establishment of the Republic would both be the result of decisions made exclusively by the political elite, without popular participation.¹³⁷

If, on the one hand, those sectors of society were seeking to debunk the myths surrounding historic 'truths' through new memory initiatives, on the other, figures such as government bodies, companies, various institutions, and journalists were beginning to apply themselves to carrying out historic restoration, by organising archives, and publishing books and interviews. These initiatives, however, were linked to a 'pattern of commercialising memory and turning it into a political spectacle'.¹³⁸ In that context, it is possible to glimpse the beginning of the construction of memories of the Brazilian State's military period:

From the 1990s, the State developed a policy on memory, albeit a timid, intermittent and somewhat staccatoed policy, traced from the victims' memories of violence under the regime. It became much clearer and more regulated from 1995.¹³⁹

¹³⁶ Torelly, 'Justiça de Transição e Estado Constitucional de Direito' (n 125) 238.

¹³⁷ Benito Bisso Schmidt, 'Cicatriz aberta ou página virada? Lembrar e esquecer o golpe de 1964 quarenta anos depois' (2007) 14(26) Anos 90 (UFRGS, Porto Alegre) 130 (twice translated: PT>ES>EN).

¹³⁸ *ibid* 131.

¹³⁹ Napolitano (n 108) 25 (twice translated: PT>ES>EN).

Alongside the ‘universal’ institutional reforms that came with the 1988 Federal Constitution, the 1980s and 1990s saw the axing of the main security and intelligence agencies which had been linked to political policing under the military regime, acting parallel to ordinary policing and the army. The Information Operations Detachment-Centre for Internal Defence Operations (DOI-CODI), linked to the Army, and the National Information Service (SNI) were axed in 1990. The latter was replaced in 1999 with a regulatory agency: the Brazilian Intelligence Agency (ABIN).¹⁴⁰ These institutional reforms were part of an independent pillar of Transitional Justice, however they also contributed indirectly to politics of memory in Brazil by facilitating the uncovering of the ‘repression-era archives’ (which is further discussed in the chapter 3.3.1.1).

Although it is possible to identify regional state truth initiatives from the early 1990s with a focus on searching for the bodies of the dead or missing,¹⁴¹ it was possibly under the President of the time, Fernando Collor de Mello, that the Brazilian federal government enacted one of its first memory-truth policies, relating to the release of documents. Beginning with demands from the relatives of victims under the dictatorship and based on the recent experiences in Eastern Europe, the President issued a presidential order for the police archives to be opened.¹⁴²

The ‘Dossier on Political Deaths and Disappearances after 1964’ was published in 1995, organised and launched after collaborative work between the Commission of Families of the Political Dead and Disappeared, the Institute of Research into State Violence (IEVE) and

¹⁴⁰ Torelly, ‘Justiça de Transição e Estado Constitucional de Direito’ (n 125) 229.

¹⁴¹ ‘In 1990, after the discovery of the remains of 1,049 bodies buried secretly in a mass grave at a cemetery in São Paulo, the then mayor of that city, Luiza Erundina of the Worker’s Party (PT), created a special commission to investigate the remains. Later, a parliamentary commission of inquiry in the municipality of São Paulo and a Commission for the Search for Victims of Political Disappearance in the state legislature (1990-1994) were established. State authorities in Rio de Janeiro and Pernambuco also initiated investigations in local cemeteries with TNM [Torture Never Again] groups, legal medicine institutions, anthropologists, the police and EAFF’ (Barahona de Brito (n 112) 141). According to the 1995 ‘Dossier on Political Deaths and Disappearances after 1964’, in 1990 the Paraná and Pernambuco state governments immediately opened up the dictatorship-era police archives to the families of the dead and missing. In São Paulo, instead, the archives were opened to the general public in late 1994 after family members negotiated with the Federal Police and the São Paulo state government. In Rio de Janeiro, in August 1992, the archives of the defunct Department of Political and Social Order (DOPS) were handed over to that state’s government, with immediate permission granted to the Torture Never Again group (twice translated: PT>ES>EN).

¹⁴² Barahona de Brito (n 119) 141.

the Rio de Janeiro and Pernambuco State sections of the Torture Never Again group (all civil organizations), with the support of the Pernambuco State government. The report's work began with a document dated 1984, from the Rio Grande do Sul State section of the Brazilian Committee for Amnesty. It contained a partial list identifying 339 people who died or disappeared during the national security regime. They reached a new number - still not considered final - of 360 identified as officially having died, gone into exile or disappeared in Brazil and abroad during the dictatorship. In fact, the report highlighted the lack of elucidation about thousands of deaths of rural and urban workers, peasants and indigenous peoples, and groups in situation of socio-economical vulnerability considered to have died directly or indirectly at the hands of the regime.¹⁴³

In the 1994 presidential campaign, the two main candidates - Fernando Henrique Cardoso (FHC) and Luiz Inácio Lula da Silva - signed a letter of commitment drawn up by groups of families of the dead and missing. It bound the future government to adopting 10 fundamental points relating to memory and truth, including: formal public recognition from the Brazilian State of its full responsibility for the imprisonment, torture, death and disappearance of political opposers between 1964 and 1985; the establishment of an investigation and reparations commission under the Federal Executive Branch, made up of members of official bodies, and representatives and organizations of family members, with the aim of shedding light on death and disappearance cases, and awarding reparations accordingly.¹⁴⁴

In 1995, after FHC was elected and assumed power, family member organizations met with the then-justice minister Nelson Jobim to define the key points of a future law on reparations and investigations, and to give him a copy of the dossier those same relatives had published that year. After subsequent meetings between civilians and the State, the Justice Minister proceeded to draw up a bill around the points discussed with the family member organizations, and contained in the *Brasil: Nunca Mais* report and the recently published 1995 dossier.¹⁴⁵

¹⁴³ Maria do Amparo Almeida Araújo et al., *Dossiê dos mortos e desaparecidos políticos a partir de 1964* (Companhia Editora de Pernambuco, Recife 1995).

¹⁴⁴ CEMDP (Brasil), *Direito à Memória e à Verdade: Comissão Especial sobre Mortos e Desaparecidos Políticos* (Secretaria Especial dos Direitos Humanos, Brasília 2007) 32-33.

¹⁴⁵ *ibid* 34.

Although the family members intended for considerable debate around the issue to be generated by the submission of the bill to Congress - with a focus on opening up the remaining archives from the dictatorship, locating bodies, and having individual accountability acknowledged (the last of the goals being compensation) - there were no great discussions before its approval, beyond the reaction of factions that considered the concepts of making assessments and handing out punishment tantamount to 'revanchism'.¹⁴⁶ The FHC government's argument, then, in order to secure the support of the then-Minister of Aeronautics and the former Head of the Institutional Security Office, was that reparations would be a matter of democratic rule of law and not one of assigning blame, or much less accountability, to any given regime or government - it was considered at the time impossible to even propose such an idea.¹⁴⁷

With the enactment of Law No 9,140 of 4 December 1995, it is possible to identify, under the FHC government, features belonging to the second phase of Transitional Justice in Brazil: the creation of reparations and memory commissions. The law in question was responsible for the establishment of the Special Commission on Political Deaths and Disappearances (CEMDP) as well as defining how it would be structured. This Commission's role was to locate the bodies of the dead and disappeared and analyse family members' requests for pecuniary reparations (compensation). Further, it had an appendix containing 136 names of people already recognised as disappeared, facilitating the family members' demands for compensation.

The law established a substantially relevant legal instrument: it recognised the disappeared as dead, after they had been accused of participating (or had actively participated) in political activities and had been detained by public agents. In fact, article 1, transcribed below, ruled:

For all legal effects, the persons [included in Appendix 1 of this Law] are recognized as deceased, for having participated, or for having been accused of participating, in political activities, during the period of September 2, 1961, to August 15, 1979, and that for said reason, were detained by public agents, having been disappeared since then, without any news from them.¹⁴⁸

¹⁴⁶ In the years that followed, this term was widely used in the public discussions concerning assessments of official agents' responsibility for crimes committed during the dictatorship.

¹⁴⁷ CEMDP (Brasil), 'Direito à Memória e à Verdade' (n 144) 36-37.

¹⁴⁸ Brasil, 'Lei Nº 9.140, de 04 de dezembro de 1995', *Diário Oficial da União* (5 December 1995) <www.planalto.gov.br/ccivil_03/L/LEIS/L9140.htm> accessed 9 July 2019 (translation available at <www.corteidh.or.cr/docs/casos/articulos/seriec_219_ing.pdf> accessed 16 June 2020).

The Commission's first membership included a deputy from the Chamber of Deputies' Human Rights Commission, a person with connections to the victims, a representative from the Armed Forces, a member of the Federal Public Ministry and three people freely appointed by the President of the Republic. The Commission's peculiar composition is a factor that generated innumerable internal disputes and public controversy.¹⁴⁹

General Oswaldo Pereira Gomes' participation as the the Armed Forces' representative between 1995 and 2003 generated resistance from victims' families, due to his being mentioned in the *Brasil: Nunca Mais* report as an officer with links to the repression. Furthermore, the General publicly spoke in favour of compensating the family members of civilians and military personnel who had died defending the regime, by voting against the compensation for key figures such as Zuzu Angel, Carlos Marighella and Carlos Lamarca (to no avail) - a sign of the general trend in the study of the State's repressive practices in the country, which would become more public in the following decades. In fact, the General attributed the 'thankless mission' of being appointed to the CEMDP not just to his legal experience but also as a means of avoiding that 'power fall into the hands of any of the many flatterers obeying those temporarily in charge', declaring that, in the CEMDP, 'it is the illegal homicidal violence of two factions, from 1961 to 1979, that is on trial'.¹⁵⁰ Declaring the pride he felt for participating in the Commission, he affirmed that his presence 'represented the contrasting view'¹⁵¹ and that he 'was acting as a lawyer appointed by the Armed Forces'.¹⁵² For no other motive, it became necessary for the CEMDP to persistently strive, alongside the Armed Forces, to obtain information on the location of confrontations, prisons and deaths of militants in, for example, the Araguaia Guerrilla War.¹⁵³

With regards to the CEMDP's first years in action, figures in public politics and family member organizations questioned the difficulties in accessing compensation,¹⁵⁴ due to the process not just requiring a

¹⁴⁹ CEMDP (Brasil), 'Direito à Memória e à Verdade' (n 144) *ibid* 39.

¹⁵⁰ Oswaldo Pereira Gomes, 'Os militares e a comissão dos desaparecidos', *Folha de S. Paulo* (23 October 1998) <www1.folha.uol.com.br/fsp/opiniao/fz23109810.htm> accessed 15 July 2019 (twice translated: PT>ES>EN).

¹⁵¹ This was a standpoint shared by his successor, Colonel João Batista Fagundes, nominated by Lula in 2003 and part of the Commission until 2019.

¹⁵² CEMDP (Brasil), 'Direito à Memória e à Verdade' (n 144) 38 (twice translated: PT>ES>EN).

¹⁵³ *ibid* 41.

¹⁵⁴ CEMDP (Brasil), 'Direito à Memória e à Verdade' (n 144) 35 (twice translated: PT>ES>EN).

reparations application but also the death certificate, a difficult document to get hold of (notaries refused to provide such certificates. They were only granted upon intervention from the Ministry of Justice, and in that case they came as a document that determined the person as legally presumed dead). These groups also questioned various other aspects: the purely pecuniary nature of reparations; the burden of proof that deaths were caused by the State being on the relatives, who had to disprove the official account for each death (although the Commission also made efforts to find the real truth, other than the formal truth from the evidence given in each case); and the abstract accountability accepted by the State, where there were no further measures of individual accountability for the agents involved in the events. Neither did the Commission 'receive instruments or full powers for assessing the particulars of death certificates, despite gaining the authority to carry out the proceedings for body searches, as they were evidence brought by the family members'.¹⁵⁵ The government did little to share the policy on providing reparations to the families of those who had died or disappeared. It was therefore up to family member organizations, the Chamber of Deputies' Human Rights Commission, and individual political figures to offer guidance and support to those families who were still unaware of the CEMDP.¹⁵⁶

The CEMDP's work is the earliest carried out by a national Transitional Justice commission, which is addressed in the following chapter. Towards the end of the FHC government, Law No 10,536 of 14 August 2002 would be approved. It widened the term for compensation requests to the CEMDP by over 120 days and extended the time period under the CEMDP's examination to 5 October 1988, making it possible for other deaths to be recognised, in addition to those automatically listed in the appendix to the original law. The Commission has continued its work to the present day (2020),¹⁵⁷ with active stints and inactive ones, due to the lack of total elucidation as to what happened to the remains of the dictatorship's victims.

¹⁵⁵ CEMDP (Brasil), 'Direito à Memória e à Verdade' (n 144) 35 (twice translated: PT>ES>EN)

¹⁵⁶ *ibid* 35-36.

¹⁵⁷ In August 2019, the federal government made an unprecedented replacement of four of the CEMDP's seven members who had been present during previous governments. The new members included at least one overt supporter of the 1964 regime, with President Jair Bolsonaro justifying the measure by the fact that his government is right-wing, and in the midst of attacks by the President on the entire Transitional Justice agenda in Brazil (available at *Folha de S. Paulo*, <www1.folha.uol.com.br/poder/2019/08/bolsonaro-muda-comissao-de-mortos-e-desaparecidos-em-meio-a-ataques-sobre-o-tema.shtml> accessed 1 August 2019).

On the other hand, at least two aspects of the law in question demand attention. Firstly, despite being present ‘in spirit’ and also raised in the debates among the legislature that led to the passing of the Amnesty Law, the idea of regulating around the principle of ‘national reconciliation and peacemaking, as set forth under Law No 6,683 of 28 August 1979 - Amnesty Law’ (article 2), was not contained in the final text of the same Amnesty Law. In a way, this shows a continuity with the paradigm of pacted transition to democracy and, at the same time, presents a certain contradiction of the intentions of the same CEMDP Law (to promote reparations and the truth) in referring back to the Amnesty Law. As I mentioned under the previous point, the Amnesty Law lays down a premise of absolute oblivion and reconciliation as a means towards redemocratization, while the CEMDP had indeed put forward a different proposal concerning granting reparations to the victims of the State in a past put in a grey zone.

Secondly, an ‘imaginary’ period of time is used as a reference for assessing human rights violations and for granting pecuniary reparations. Initially this was 1961-1979 (later extended to 1988) and not 1964-1985 (the regime’s ruling period) or 1946-1988 (the period set forth in article 8 of the ADCT. From one perspective, this shows recognition that institutional collapse began in 1961, with the military intervention that attempted to impede the *de jure* president João Goulart from taking power;¹⁵⁸ from another, it shows the State’s persistent resistance to using the military regime’s rule as the time frame for State violations of human rights - probably as a way of avoiding political clashes with the Armed Forces.

Law No 9,140/1995 points out other initiatives for pecuniary reparations at a regional level (that is to say, from each federative unit).¹⁵⁹ Even so, these initial policies in their experimental stages were not sufficient to overcome certain ‘apathy’ among the population regarding these issues, while the ‘struggle of the relatives has been a solitary one’.¹⁶⁰ Even so, family groups’ initiatives - as exemplified in the work on the dossier - continued to have a direct influence on the way in which the Brazilian State would handle matters of its recent past.

¹⁵⁸ CEMDP (Brasil), ‘Direito à Memória e à Verdade’ (n 144) 51.

¹⁵⁹ ‘Following the lead of the national government, in November 1997 the state of Rio Grande do Sul enacted a law providing compensation for persons tortured in the state during the military regime. In 1998, the state of Santa Catarina created a panel to award people tortured for political reasons’ (Barahona de Brito (n 119) 142).

¹⁶⁰ Barahona de Brito (n 119) 142.

As such, the Amnesty Commission was set up in 2001 by a Provisional Measure later converted into Law No 10,559 of 13 November 2002. At the time, it was connected to the Justice Ministry, unlike the CEMDP which was installed under what was at the time the Human Rights Secretariat of the Presidency of the Republic. The Law regulated aforementioned article 8 of the ADCT. In addition to creating the Commission's structure, it regulated the *political amnesty system*, including laws on the declaration of political amnesty, pecuniary reparations, the conclusion of interrupted investigations and the reinstatement of civil servants and public employees. According to Torelly, the Amnesty Commission's Law came just at the right time, as a way of making up for past shortcomings, with regard to reparations - of the Amnesty Law as much as of the CEMDP's Law. He cites these shortcomings as being:

- (i) The need for reparations for all and any persons afflicted by extremism or any form of political persecution, not limited solely to those whose persecution resulted in their death or disappearance (who received reparations under the 1995 law);
- (ii) The limitations in the provisions of earlier legislation (1979, 1985) of the process for reinstating civil servants forced out of their positions;
- (iii) The need to devote attention to private sector workers, executives, and union representatives who had been punished, dismissed, or forced out of their paid positions for purely political reasons, as well as those who were prevented from carrying out their professional activities by ostensible pressure or secret official order;
- (iv) The need to devote attention to a sizeable group of civil servants and public employees at all levels of government or within its entities, or in public companies or mixed companies in which the State held a controlling bloc, who were punished or dismissed due to professional activities being interrupted at its workers' decisions, whether for political motivation or otherwise;
- (v) The criticisms of the limited nature of reparations granted to the families of the political dead and disappeared under the 1995 law's provisions for reparations, which did not cover transgenerational damages or damages inflicted as a result of political persecution that occurred before the death or disappearance;
- (vi) The need to establish a special process of analysis, as a large part of the public documents from the period were never made accessible to the general population; and finally,
- (vii) The existence of a wide range of damages inflicted by the State for which economic reparations was not the best available alternative.¹⁶¹

¹⁶¹ Torelly, 'Justiça de Transição e Estado Constitucional de Direito' (n 125) 239 (twice translated: PT>ES>EN).

The Commission's original objective was to fulfil the ruling of article 8 of the ADCT, pursuant to the Law in question, while safeguarding the political amnesty system (with or without compensation) and granting moral and economic reparations to the victims of extremism between 1946 and 1988, with particular focus on the period of civil-military dictatorship between 1964 and 1985. At that time, the Commission also took charge of administrative processes underway within other agencies of the public authority. As the years passed, in addition to focusing on pecuniary reparations, the Commission incorporated the Transitional Justice perspective into its actions, through pillars such as reparations (psychological and symbolic included). It promoted social collective memory and sought the historical truth about events that took place during the period on which its work focused. These projects and policies on memory are the subject of more detailed analysis in point 3.2 of this thesis.

Just as with the CEMDP Law, the Amnesty Commission Law set an 'imaginary time frame' for its reparations, this time based around article 8 of the ADCT: 1946 to 1988. Owing to political pressure that opposed setting a clear military period in legal texts and administrative acts, the 'imaginary period' of 1946 to 1988 is repeatedly used, for example, in the National Truth Commission Law. The wide variation in time periods on which the Commissions worked partly explains the lack of debate around accountability for the deaths and disappearances, at least in the early stages of the CEMDP and the Amnesty Commission.¹⁶² Meanwhile, any reliance on the period 1946 to 1988 indicates the instability of democracy during the Third Republic, which suffered six coup attempts (in 1950, 1954, 1955, 1956, 1959 and 1961),¹⁶³ as well as the absence of democratic constitutional order between the end of the dictatorship in 1985 and the promulgation of the new Constitution in 1988, an interim period during which the 1969 dictatorial 'Constitution' was in force.

On the other hand, the World Conference on Human Rights in Vienna in 1993 led to the Declaration and Programme of Action, pressing the Members States of the UN to develop internal mechanisms for guaranteeing human rights. In that vein, Decree No 1,904 of 13 May

¹⁶² Napolitano (n 108) 29.

¹⁶³ Torelly, 'Justiça de Transição e Estado Constitucional de Direito' (n 125) 175.

1996 led to the creation of the National Programme for Human Rights (PNDH), ‘containing an assessment of the human rights situation in the country and measures for defending and promoting them, in the form of the Appendix to this Decree’ (article 1) as well as setting objectives for the enjoyment of those rights, in collaboration with the Ministry of Justice.¹⁶⁴ Set up through a series of seminars and consultations with human rights organizations, the programme represented a framework for institutionalising society’s demands. In 2002, the second version of the PNDH was published. Although the first two PNDHs were progressive for including objectives for various areas of human rights, they did not make any reference to collective memory, at least with regard to the recent past or to Transitional Justice. This would not happen until the third PNDH was published in 2009, which is addressed under point 3.3.1.3 of this thesis.

¹⁶⁴ Brasil, ‘Decreto N° 7.037, de 21 de dezembro de 2009’, *Diário Oficial da União* (22 December 2009) <www.planalto.gov.br/ccivil_03/_ato2007-2010/2009/decree/d7037.htm> accessed 9 July 2019 (twice translated: PT>ES>EN).

3.

POLICIES ON MEMORY: ACTIONS TAKEN BY FEDERAL ENTITIES AND AGENCIES BETWEEN 2003 AND 2016

During the time frame chosen for this study of politics of memory in Brazil and their impact on the formation of collective memory, significant steps were taken in terms of providing reparations to individual victims of the dictatorship. The pecuniary paradigm had great relevance as a way to repair the patrimonial and professional damages to the persecuted people, overcoming the idea, spread by some media and social groups, that it would be a *bolsa-ditadura* (a ‘dictatorship-scholarship’, in free translation).¹⁶⁵ Still, monetary payouts were not enough to capture the full potential of reparations, nor were they seen as entirely satisfactory in that sense.

The focus on Transitional Justice in Brazil paved the way for the State to promote policies on memory, truth and reparations. Specifically, the concept of Transitional Justice was added to the government agenda in 2007, beginning with a mention in the annual report of the Amnesty Commission, which would be restructured that year.¹⁶⁶ In 2008, an international development project was set up. The project was entitled *BRA/08/021 cooperação para o intercâmbio internacional, desenvolvimento e ampliação das políticas de Justiça de Transição* (cooperation for international exchange development and widening of Transitional Justice policies) and it institutionalised the concept.¹⁶⁷

¹⁶⁵ Roberta Camineiro Baggio, ‘Anistia e Reconhecimento: o processo de (des)integração social da transição política brasileira’ in P Abrão, LA Payne & MD Torelly (eds), *A Anistia na Era da Responsabilização: O Brasil em Perspectiva Internacional e Comparada* (Ministério da Justiça-Comissão de Anistia/Oxford University-Latin American Centre, Brasília/Oxford 2011) 270.

¹⁶⁶ Comissão de Anistia (Brasil), *Relatório Anual da Comissão de Anistia 2007* (Brasília 2007) 5.

¹⁶⁷ Marcelo D Torelly, ‘Justiça de Transição – origens e conceito’ in JG Sousa Junior (ed), *O direito achado na rua, vol. 7: introdução crítica à justiça de transição na América Latina* (UnB, Brasília 2015) 150.

In the same vein, change was made to the focus of reparations policies, in line with the proposed aims of Transitional Justice. The federal government began to consider policies on memory and truth, such as the Amnesty Caravans, Marks of Memory and Testimony Clinics, all promoted by the Amnesty Commission (which at the time functioned under the auspices of the Ministry of Justice). In the face of a total absence of policies on accountability (or, rather, a failure to bring the State to justice having violated human rights), as well as the timid reforms¹⁶⁸ during the 1990s and 2000s of institutions inherited from the 1964 regime, the role of seeking a way to overcome authoritarian rule fell to reparations, as seen in chapter 1.

The next few pages of this chapter focus on the three federal commissions devoted to working on Transitional Justice in Brazil during the Lula da Silva and Dilma Rousseff administrations. There was a certain continuity of the issue between the two, with the Rousseff government carrying forward certain policies that had been initiated under Lula da Silva. The aim is also to highlight specific policies on memory promoted by the State's ministries. Bringing those politics into the discussion creates a wider picture of all the memory initiatives set up under the Brazilian federal government, while also providing analysis of the role those initiatives played in building a historical memory of the country that is held collectively by the population.

With the aim of highlighting the role of each of the three main commissions for reparations, memory and truth during the time frame studied, I chose to address each separately from the ministry to which they are or were connected. That allowed me to devote a space to each as I analysed the politics implemented directly by the State's ministries or by bodies with the same status as a ministry. Where it was not possible to order my analysis in line with institutional structure, I have highlighted the specific approaches the federal government took (for example, actions taken to grant access to dictatorship-era documents, or in the search for the bodies of those who died or disappeared in the Araguaia).

¹⁶⁸ Marcelo D Torelly, *Justiça de Transição e Estado Constitucional de Direito: Perspectiva Teórico-Comparativa e Análise do Caso Brasileiro* (Fórum, Belo Horizonte 2012) 229-32; Marcos Napolitano, 'Recordar é vencer: as dinâmicas e vicissitudes da construção da memória sobre o regime militar brasileiro' (November 2015) 8(15) *Antíteses* (Universidade Estadual de Londrina, Londrina) 25.

Similarly, it seemed necessary to consider civil society's participation and role in building the memories needed to shape state politics of memory. Without the former, there would have been many occasions in which the latter simply were not created.¹⁶⁹

3.1. SPECIAL COMMISSION ON POLITICAL DEATHS AND DISAPPEARANCES (CEMDP)¹⁷⁰

The CEMDP was initially linked to the Ministry of Justice. With Luiz Inácio Lula da Silva as President, it continued in the same line of work as it had during its initial phase: evaluating compensation requests from the family members of those who met the requirements set out in Law No 9,140/1995.

In 2004, the CEMDP Law underwent another change with Law No 10,875 of 1 June 2004, which widened the criteria that determined whether a person might be declared legally dead. The criteria now included those who fell victim during public demonstrations or the victims of armed conflict with officers of the public authority, as well as those who had committed suicide in the face of imminent capture or as a result of the psychological consequences of torture. The CEMDP was also transferred from the Ministry of Justice to the Special Secretariat for Human Rights of the Presidency of the Republic (later Ministry of Human Rights, after name changes). At that point, the deadline for receiving the latest compensation requests was extended by another 120 days.

In late 2006, the Commission had approved 221 applications and denied 118 in a process involving a debate followed by a vote. This was in addition to the 136 persons recognised in the original law's appendix. Compensation was granted only after a new request from the family members. There was a minimum payout of R\$ 100,000.00 (a hundred

¹⁶⁹ Nora Rabortnikof, 'Memoria y política a treinta años del golpe' in CE Lida; H Crespo & P Y. (eds), *Argentina, 1976. Estudios en torno al golpe de Estado* (Fondo de Cultura Económica, Buenos Aires 2008) 260-61.

¹⁷⁰ From the works carried out by the CEMDP beginning in 1995, the book *Direito à Memória e à Verdade* (The Right to Memory and the Truth) was published, in 2007. This was effectively a report on the cases the Commission looked at during its 11 years of existence and operation. The book/report contained 5,000 examples. It was the main secondary source used to outline the general landscape of the Commission's first years. That outline was then used to analyse its work promoting policies on memory.

thousand reais), calculated on the basis of the life expectancy of each person at the date of their death or disappearance.¹⁷¹

From the works carried out by the CEMDP beginning in 1995, the book *Direito à Memória e à Verdade* (The Right to Memory and the Truth) was published, in 2007. This was effectively a report on the cases the Commission looked at during its 11 years of existence and operation. As Schmidt points out, the book/report was ‘the first official document from the federal government to hold the military dictatorship accountable for the torture and death of many of its opposers. The publication stirred up deep misgivings among the Army High Command, which reacted negatively to the book’s launch’.¹⁷² It was in fact a framework for breaking down the silence that had endured until that point concerning the State’s position on the recent past; at the same time, it generated dissatisfaction among the armed forces, which they had not shown at the time of the CEMDP’s establishment.

After concluding its first phase of works, the CEMDP began a second in which it ‘[collected] blood samples from blood relatives of the disappeared or dead whose bodies had not been returned to the family members, in order to create a [DNA] database’.¹⁷³ The objective was to meet one of the central provisions of the CEMDP Law: article 4, subsection II ruled that the bodies of the disappeared should be located whenever there were indications as to the places in which they had been left. However, a lack of human and material resources made it difficult to successfully carry out works relating to searching for bodies. As a result, the Federal Public Ministry (MPF) stepped in with legal action in 2009 against the Federal Union (the name used to refer to the Brazilian State as a legal person), aiming to set up an appropriate structure for the CEMDP to be able to operate.¹⁷⁴

The CEMDP combined forces with the Araguaia Work Group (GTA), set up in 2011 (as seen in point 3.3.1.2). They began activities

¹⁷¹ CEMDP (Brasil), *Direito à Memória e à Verdade: Comissão Especial sobre Mortos e Desaparecidos Políticos* (Secretaria Especial dos Direitos Humanos, Brasília 2007) 40-41.

¹⁷² Benito Bisso Schmidt, ‘Cicatriz aberta ou página virada? Lembrar e esquecer o golpe de 1964 quarenta anos depois’ (2007) 14(26) *Anos 90* (UFRGS, Porto Alegre) 150 (twice translated: PT>ES>EN).

¹⁷³ CEMDP (Brasil), ‘Direito à Memória e à Verdade’ (n 171) 17.

¹⁷⁴ Marlon Alberto Weichert, ‘A questão dos desaparecidos políticos no Brasil. Perspectivas com a Comissão Nacional da Verdade’ in Instituto Macuco (ed), *Vala Clandestina de Perus: Desaparecidos Políticos, um capítulo não encerrado da História Brasileira* (Instituto Macuco, São Paulo 2012) 121.

in São Paulo and Rio de Janeiro, ‘in addition to investigating other sites throughout Brazil in relation to Operation Condor’.¹⁷⁵ The role of the CEMDP was to support the CNV, in line with the provisions of the Law that Commission had created, by providing aid in the form of information.¹⁷⁶ Eventually the CEMDP came to act in partnership with the CNV. For example, in 2013, they worked together ‘to correct the death certificate of journalist Vladimir Herzog and secure the exhumation of the remains of João Goulart, who was given state honours, his title of President of the Republic reinstated, 37 years after his death’.¹⁷⁷

The CEMDP also hosted a webpage containing the results of the ‘Places of Memory’ project¹⁷⁸. To meet the requirements of the Third National Programme for Human Rights (PNDH-3), and with the aim of commemorating past events with a view to honouring victims and constructing collective memory, the Commission identified and listed 222 places of memory. These were locations or buildings where human rights violations had taken place during the dictatorship, where there was conflict against the repressive state, or where deaths occurred as a consequence of those repressive practices - where an exiled person had committed suicide, for example.

Since the publication of the CEMDP’s book/report, records of its work available from official sources have been scarce. It is known that the Commission continued its focus on the search for the bodies of those who died or disappeared during the dictatorship. Furthermore, it functioned alongside the Amnesty Commission and the future CNV, all three exchanging information necessary for each Commission’s work. Equally, until July 2019, its webpage (still making reference to the

¹⁷⁵ Presidência (Brasil), *Mensagem ao Congresso Nacional, 2012* (Presidência da República, Brasília 2012) 222-23 (twice translated: PT>ES>EN).

¹⁷⁶ *ibid* 222.

¹⁷⁷ Presidência (Brasil), *Mensagem ao Congresso Nacional, 2014* (Presidência da República, Brasília 2014) 213 (twice translated: PT>ES>EN).

¹⁷⁸ The places of memory search tool was available, up until the preliminary conclusion of this thesis (in July 2019), at the link: <https://cemdp.sdh.gov.br/modules/lugares_memoria/search.php>. However, according to Internet Archive *Wayback Machine* (available at <https://web.archive.org/web/20190411120821/https://cemdp.sdh.gov.br/modules/lugares_memoria/search.php>), the tool was last available online on 5 August 2019, just days after the Jair Bolsonaro administration made an unprecedented change to the CEMDP’s structure, in line with what was mentioned in the footnote n 150, on the previous chapter. During the first half of 2020 (period in which this thesis was revised for this publication), there were no records of any other government webpage available through the tool, showing that this has been temporarily or permanently lost.

Secretariat of Human Rights (SDH/PR), which ceased to function in October 2015)¹⁷⁹ noted that the SDH/PR's 'Right to Truth and Memory' Project, in partnership with the CEMDP,

made efforts with the intention of supporting National Truth Commission activities, beginning by encouraging the organization of Committees, Fora, Collectives and Commissions of Memory, Truth and Justice, which can contribute criticism, demands, suggestions and works in order to establish a political environment that favours public Truth about the serious human rights violations that took place during the military dictatorship, committed by agents and others involved in enforcing the State's repressive policies. So that NEVER AGAIN shall they happen.¹⁸⁰

Up until 2015, the CEMDP focused on assessing the remains of bodies found in the Perus mass grave discovered in 1990 in São Paulo.¹⁸¹ It aimed to continue the work of the aforementioned Araguaia Work Group.¹⁸² As early as 2016, the Commission passed an internal regulation¹⁸³ seeking to systematise its procedures (one of the final recommendations made in the CNV report) and issued a technical opinion on compensation requests that had been put together based on a CNV acknowledgement that a person had been a victim of the State or based on an appeal for re-evaluation.¹⁸⁴

¹⁷⁹ According to the Internet Archive *Wayback Machine*. Available at: <<https://web.archive.org/>>, via the link <<https://cemdp.sdh.gov.br/modules/wfchannel/index.php?pagenum=1>> accessed 8 July 2019.

¹⁸⁰ CEMDP (Brasil), 'Sobre o Projeto - Projeto Direito à Memória e à Verdade', *Comissão Especial sobre Mortos e Desaparecidos Políticos*, s/f, <<https://cemdp.sdh.gov.br/modules/wfchannel/index.php?pagenum=6>> accessed 8 July 2019, author's emphasis (twice translated: PT>ES>EN).

¹⁸¹ On 4 September 1990, the clandestine mass grave in the Dom Bosco Cemetery in Perus - a suburban area to the west of the city of São Paulo - was uncovered. It contained the remains of unknown people, 'victims of social ills', as well as those of others identified as victims who had been kidnapped, tortured and killed by the State in the 1970s (Maria Amélia Teles & Suzana Keniger Lisboa, 'A vala de Perus: um marco histórico na busca da verdade e da justiça!', in Instituto Macuco (ed), *Vala Clandestina de Perus: Desaparecidos Políticos, um capítulo não encerrado da História Brasileira* (Instituto Macuco, São Paulo 2012) 51-52).

¹⁸² João Mello, 'Comissão de Mortos e Desaparecidos Políticos inicia nova fase de trabalho', *Jornal GGN*, (6 October 2015) <<https://jornalggm.com.br/direitos-humanos/comissao-de-mortos-e-desaparecidos-politicos-inicia-nova-fase-de-trabalho/>> accessed 15 July 2019.

¹⁸³ SEDH (Brasil), 'Resolução SEDH N° 1, de 27 de janeiro de 2016', *Diário Oficial da União* (2 February 2016) <www.diariodasleis.com.br/legislacao/federal/232390-mortos-e-desaparecidos-politicos-aprova-o-regimento-interno-da-comissao-especial-sobre-mortos-e-desaparecidos-politicos.html> accessed 15 July 2019.

¹⁸⁴ Andreia Verdélio, 'Comissão sobre Mortos e Desaparecidos Políticos aprova regimento interno', *Agência Brasil* (2 February 2016) <<http://agenciabrasil.ebc.com.br/direitos-humanos/noticia/2016-02/comissao-sobre-mortos-e-desaparecidos-politicos-aprova-regimento>> accessed 15 July 2019.

Belisário dos Santos Júnior was a lawyer and member of the CEMDP (representing civil society) from 2001 to 2016. He offers a retrospective comment on the CEMDP's work for the book/report *The Right to Memory and the Truth*, in which he suggests that 'the Special Commission's work and presentation contributed, in a way, to softening the pain of families whose family members had died or disappeared':¹⁸⁵

When an official body of the State recognises a death or disappearance, their doing so gives rise to legal effects, such as gaining access to a death certificate, the chance to obtain legal status for certain family situations, compensation. However, there are also important psychological effects. It justifies all that time the family has spent searching. The State's response is felt as if it were a formal apology.¹⁸⁶

Although the CEMDP at first focused on pecuniary reparations, it played a crucial role in building memories of Brazil's dictatorial past, through the large impact it had on other collective memory policies in the country. By analysing the evidence brought forward by families and carrying out proceedings to search for material evidence of bodies and those who disappeared during the dictatorship at the hands of the Brazilian State, the CEMDP enabled that same State to take up a role, and to clarify its practices to the indirect victims of the 1964 regime and to Brazilian Society. In this way, it unveiled the truth about the recent past, which itself had an impact on the construction of collective memory.

As will be seen, after the establishment of the Amnesty Commission the search for the bodies of the dead and disappeared became the CEMDP's focal point (at least until 2019¹⁸⁷). It continued to sketch out the State's narrative which, although it did not do much to reach the population, was recorded as a policy of the State.

¹⁸⁵ CEMDP (Brasil), 'Direito à Memória e à Verdade' (n 171) 45 (twice translated: PT>ES>EN).

¹⁸⁶ *ibid* (twice translated: PT>ES>EN).

¹⁸⁷ Amid the change in CEMDP staff previously (n 157) reported, an activity report covering the period from September 2018 to July 2019 (the last with the participation of members dismissed in 2019) was made available on the federal government portal (CEMDP (Brasil), 'Relatório de Atividades Nº 01/2019 (Sept/2018 - Jul/2019)' (Comissão Especial Sobre Mortos e Desaparecidos Políticos, Brasília 2019)).

3.2. AMNESTY COMMISSION

In its beginnings, the Amnesty Commission - installed under the Brazilian Ministry of Justice - focused strictly on assessments in the reparations procedures, recompensing victims of the dictatorship for political persecution, loss of work, or financial losses suffered under the 1964 regime. Over the years, it widened its field of action. It became the main memory commission during a period in which Transitional Justice was entering the government agenda, promoting various memory projects that came to fruition, for the most part, between 2007 and 2016. From its establishment in 2001 up to 2016, the Amnesty Commission has been responsible for assessing around 61,000 amnesty requests from a total of over 75,000.¹⁸⁸

Paulo Abrão, Amnesty Commission Chairman from 2007 to 2016, and Marcelo Torelly, Project Supervisor of the Commission from 2008 to 2013 (among other positions held), summarise the change in the Commission's activities:

The evaluation undertaken by the Amnesty Commission in order to reorganise its strategic actions between 2007 and 2010 thus took into account the following elements: (i) the wider civil society in Brazil stood somewhat removed from the topic of amnesty, the development of which passed into the hands of certain sectors that were isolated from others, with a large scale of forced efforts and wasted energy owing to the primary focus being on reconnecting the pieces of a broken but not forgotten cause; (ii) of all the branches of government, the Executive has always been the main implementing force behind Transitional Justice measures in Brazil; it has either implemented them directly or has been the figure promoting public debate that puts pressure on the other branches; (iii) in the Brazilian Transitional Justice process, the actions of the two reparations commissions are not combined; that is a damaging scenario which, when added to a reactionary attack on the reparations process, stands in the way of progress for consolidating democracy in Brazil.¹⁸⁹

¹⁸⁸ Presidência (Brasil), *Mensagem ao Congresso Nacional, 2016* (Presidência da República, Brasília 2016) 262.

¹⁸⁹ Paulo Abrão & Marcelo D Torelly, 'Justiça de Transição no Brasil: a dimensão da reparação' in BS Santos (ed), *Repressão e Memória Política no Contexto Ibero-Brasileiro: estudos sobre Brasil, Guatemala, Moçambique, Peru e Portugal* (Comissão de Anistia do Ministério da Justiça/Universidade de Coimbra, Brasília/Coimbra 2010) 35 (twice translated: PT>ES>EN).

The Commission sought to move away from a model in which reparations were solely pecuniary (criticised by the CEMDP at that time) and to redefine its own act of granting amnesty through over 90 public Amnesty Caravan hearings, in which the ‘State apologised’ to its past victims. Further, it demanded that the Brazilian State be obliged to provide psychological reparations, beginning with the Testimony Clinics - which were in-keeping with the belief that reparations were a pillar of Transitional Justice in a symbolic sense¹⁹⁰ and the ruling against Brazil in the Inter-American Court of Human Rights ‘Araguaia’ case.

Roberta Baggio, Amnesty Commission member between 2007 and 2016, indicates a change in the Commission’s membership during that period, beginning with its participation in the Amnesty Caravans in universities:¹⁹¹ ‘Up to that point, the Commission had been made up of lawyers and the politically persecuted with connections to that area of law [...] With a new generation of young people - from universities - joining the research, the issue of human rights was what drove [Transitional Justice] in a different way’.¹⁹² On the Amnesty Commission’s focuses on Transitional Justice, reparations and memory, Baggio adds:

When we found out about the four pillars of Transitional Justice through the report presented by Kofi Annan of the UN Security Council, we realised that economic reparations were a drop in the ocean when it came to surpassing the political transition stage to truly create Transitional Justice. [...] A reparations policy is never just a reparations policy: it is, of course, also a memory policy. So, in fact [...] our understanding was that reparations were never just reparations, according to the vision that sees the pillars of Transitional Justice as interconnected. Reparations always included memory (and truth, because in an administrative process of [political amnesty], the persecution of the person is recognised and, recognising that, documenting the way in which that person was politically persecuted, that’s where access to the truth is granted). That idea allows us to begin looking at reparations as falling within that connection to the other pillars of Transitional Justice.¹⁹³

¹⁹⁰ Pablo De Greiff, ‘Justiça e reparações’ (trad. de A Tissot & D Frantz) in F Reátegui (ed), *Justiça de transição: manual para a América Latina* (Comissão de Anistia-Ministério da Justiça/Centro Internacional para a Justiça de Transição, Brasília/Nueva York 2011) 408.

¹⁹¹ Interview with Roberta Camineiro Baggio, Professor, Faculty of Law, Federal University of Rio Grande do Sul (Buenos Aires, Argentina, 12 July 2019). Roberta Camineiro Baggio holds a PhD in Law from the Federal University of Santa Catarina (UFSC), is a Professor in the Postgraduate Law Programme at the Federal University of Rio Grande do Sul and was a member of the Amnesty Commission from 2007 to 2016.

¹⁹² *ibid* (twice translated: PT>ES>EN).

¹⁹³ *ibid* (twice translated: PT>ES>EN).

Similarly, José Carlos Moreira da Silva Filho, Amnesty Commission member during the same period and vice-Chairman between 2013 and 2016,¹⁹⁴ suggests that the Ministry of Justice's appointment of Tarso Genro was a key factor in turning the Amnesty Commission towards comprehensive reparations and memory policies, by adding members from the academic world who had been involved in research into human rights.¹⁹⁵ As a result, this also sparked a process of widening the academic debate around Transitional Justice and its consequences, which had been lacking in the country prior to that time. It also led to the creation of research teams and new lines of investigation into the recent past in Brazil.

The Amnesty Commission's peak of action in the field of memory can be considered to be the *Marcas da Memória* or 'Marks of Memory' Project. Between 2008 and 2014, this aimed to finance and support civil and state memory initiatives as a means of decentralising memory initiatives away from the State and allowing for the construction of very different narratives from social entities. The project rolled out activities on four fronts: 1) Public hearings and meetings with people who had been politically persecuted during the dictatorship; 2) Projects that interviewed people who had been politically persecuted during the dictatorship; these interviews were guided by an oral history methodology; 3) Public announcements to promote civil projects, in initiatives such as written publications (for example, books, case reports, research reports and military service records), audiovisual productions, and public monuments; and 4) Publications, in the form of memoirs, academic theses, and historical texts, all distributed for free.¹⁹⁶

Finally, the project to build a Political Amnesty Memorial in agreement with the Minas Gerais Federal University (UFMG) began in 2008. It was designed to be a physical space of memory and the culture of human rights, where the heritage of the Amnesty Commission could be shared, generating a process of 'memorialization' within a space of collective atonement.¹⁹⁷

¹⁹⁴ Interview with José Carlos Moreira da Silva Filho, Professor, Law School, Pontifical Catholic University of Rio Grande do Sul (Buenos Aires, Argentina, 15 July 2019). José Carlos Moreira da Silva Filho holds a PhD in Law from the Federal University of Santa Catarina (UFSC), is a Professor in the Postgraduate Crime Sciences Programme at the Pontifical Catholic University of Rio Grande do Sul. He was a member of the Amnesty Commission from 2007 to 2016, serving as its vice-Chairman between 2013 and 2016.

¹⁹⁵ De Greiff (n 190).

¹⁹⁶ MJSP (Brasil), 'Projetos de memória e reparação', *Ministério da Justiça e Segurança Pública* (2016) <www.justica.gov.br/seus-direitos/anistia/projetos> accessed 10 July 2019.

¹⁹⁷ *ibid.*

However, many of these policies fell out of practice after 2016. They were either not concluded, as in the case of the Amnesty Memorial, or were discontinued, as with the Amnesty Caravans and the Testimony Clinics. Most of the Commission's membership - in place since 2007 - was changed after Rousseff was impeached and her deputy Michel Temer took office as President¹⁹⁸ This included appointing supporters of the regime as members of the Commission.¹⁹⁹ Below, I will delve into further detail around the features of each of the policies on memory promoted by the Amnesty Commission, aiming to highlight the 'Marks of Memory'²⁰⁰ that they left on the construction of collective memory throughout its operation during the period studied.

3.2.1. Resolution No 1: the National Policy for the Promotion of Transitional Justice and Political Amnesty

The Amnesty Commission was set up as an entity of the State. As its main role was originally the assessment of requests for pecuniary reparations, the law that created it made no provisions for other forms of reparations. During its first years of operation, the Commission focused exclusively on performing the administrative processes that arose from those requests. The addition of a focus on memories and truth, and on projects for granting reparations that were not solely monetary widened the Commission's remit. It gained further obligations as a consequence of: demands from civil society, understandings the Commission came to on its own, and the condemnation of Brazil in the Inter-American Court of Human Rights (IHR Court) in the Araguaia Case; as well as other influencing factors. Although the specific regulations (contained in ministerial administrative acts, presidential decrees or laws that originated as bills brought before the Executive) included some of the Amnesty Commission's new activities, it wasn't until 2016 that specific regulations around the matter were introduced.

¹⁹⁸ G1 (Redacción), 'Ministro da Justiça nomeia 19 novos conselheiros da Comissão de Anistia', *G1* (3 September 2016) <<http://g1.globo.com/politica/noticia/2016/09/ministro-da-justica-nomeia-19-novos-conselheiros-da-comissao-de-anistia.html>> accessed 15 July 2019

¹⁹⁹ Cíntia Alves, 'Comissão da Anistia troca membros ligados a direitos humanos por apoiadores da ditadura', *Jornal GGN* (6 September 2016) <<https://jornalggn.com.br/ditadura/sob-temer-comissao-da-anistia-troca-membros-ligados-a-direitos-humanos-por-apoiadores-da-ditadura/>> accessed 15 July 2019.

²⁰⁰ Echoing the name of one of the Commission's projects.

All of the Amnesty Commission's memory initiatives would be systematized later, in the form of the *Política Nacional de Promoção da Justiça de Transição e da Anistia Política* (National Policy for the Promotion of Transitional Justice and Political Amnesty), by means of Amnesty Commission Resolution No 1, of 20 April 2016.²⁰¹ Article 1 lists the 'actions' considered part of the 'programme':

- Art 1 - Establishing the actions to be taken under the Reparations and Memory Programme, which form the National Policy for the Promotion of Transitional Justice and Political Amnesty, namely:
 - I - Marks of Memory;
 - II - Amnesty Caravans and special hearings;
 - III - Testimony Clinics;
 - IV - Activities to educate on Memory and Truth;
 - V - The Political Amnesty and Transitional Justice Review;
 - VI - Technology Laboratory for Research into Memory and Human Rights;
 - VII - 'Never Again' Medal;
 - VIII - The Latin American Transitional Justice Network;
 - IX - Memorial of Brazilian Political Amnesty;
 - X - International Cooperation.²⁰²

The resolution was approved as Rousseff approached the end of her tenure as President. She would be suspended from her post on 12 May after a disputed impeachment process in National Congress which culminated in her removal on 31 August 2016.

²⁰¹ Comissão de Anistia (Brasil), 'Resolução Comissão de Anistia/MJ N° 1, de 20 de abril de 2016', *Diário Oficial da União, nº 76, Seção 1, 78* (22 April 2016) <www.lex.com.br/legis/27119703_RESOLUCAO_N_1_DE_20_DE_ABRIL_DE_2016.aspx> accessed 10 July 2019.

²⁰² Included in the operations of the Programme in question: the Activities to educate on Memory and Truth refer to 'the staging of national and international events and seminars' (art 5); the Political Amnesty and Transitional Justice Review was 'a biannual research publication containing unpublished articles from Brazilian and international authors on topics such as the right to the truth, politics of memory and transitional justice, as well as various materials such as photographs, testimonies, sentences and the legal decisions taken in other countries working on this issue' (art 7); the Technology Laboratory for Research into Memory and Human Rights, set up in 2017, was 'an initiative supporting the Amnesty Commission digital archive, promoting research devoted to political amnesty and transitional justice' (art 3); and the 'Never Again' medal, never actually created, was 'intended to honour natural and legal persons who had made significant contributions to the promotion of political amnesty and human rights' (art 8). The Latin American Transitional Justice Network is an initiative of the Amnesty Commission (under the Ministry of Justice), the Brazilian Cooperation Agency (under the Ministry of Foreign Affairs) and the UN Development Programme (UNDP), in partnership with the International Center for Transitional Justice (ICTJ). Lastly, international cooperation was intended as the mechanism for 'exchanging experiences of success, with particular emphasis on South-South cooperation' (art 12) (twice translated: PT>ES>EN).

There are no official records available to the public regarding the effects of creating the National Policy in question, although it is possible to ascertain that the Resolution served as a way of making official and systematizing the reparations and memory policies developed and promoted by the Amnesty Commission in the preceding years, such as state (and not just government) policies. This sought to guarantee that they would be continued in future governments, regardless of political orientation. In fact, the rest of the content in the resolution is devoted to developing the concepts behind each of the Programme's actions for practical purposes. In that regard, over the next pages I will look into the ideas defined under the Resolution in order to introduce each of the policies addressed.

3.2.2. *Amnesty Caravans*

The Amnesty Caravans consisted of travelling public hearings which reviewed applications for compensation and political amnesty. Their purpose was cultural and educational. In addition to the reparational nature of granting amnesty, a key component to these sessions was linked to shaping collective memory. The locations through which the Caravans passed were chosen to match up with geographical locations and dates where the victims requesting amnesty had suffered the violations, or in order to coincide with groups of people being 'amnestied' or the date of a specific anniversary. Each edition of the event ended with a symbolic apology from the Amnesty Commission Chairman to the victims present at the hearing. In that regard, in 2012, the Minister of Justice at the time, José Eduardo Cardozo, and the Chairman of the Amnesty Commission, Paulo Abrão, indicated:

All Amnesty Commission hearings - beginning back in 2001 - have always been public, with attendance open to any citizen. The Caravans created a mechanism of active transparency: they brought the rulings out into the open, so that everyone could gain a good understanding of the criteria applied, the documents looked at, the decisions taken by the Brazilian State. A citizen no longer had to go to the State to understand the work the Amnesty Commission was undertaking. It was the Amnesty Commission that went to the citizens.²⁰³

²⁰³ José Eduardo Cardozo & Paulo Abrão, 'Apresentação' in MJ Coelho & V Rotta (eds), *Caravanas da Anistia: O Brasil pede perdão* (Comunicação, Estudos e Consultoria, Brasília-Florianópolis 2012) 22-23 (twice translated: PT>ES>EN).

The Amnesty Commission's 2008 annual report contains details on the Caravans' actions: they showed an official video, and held special hearings and memory sessions; there was a campaign for document recovery, there were cultural activities, and they put together a flag of democratic freedoms. The special hearings were the central focus of the Caravans, taking place on every occasion. They heard and assessed amnesty requests, and were structured by specific issue, the group involved, and/or the place at which persons were persecuted by the State. The memory sessions consisted of showing videos that honoured those who had been politically persecuted. The cultural activities took place during Caravans that involved participation from young people - at a student gathering, for example. And the flag of democratic freedoms was made by civil entities and human rights defenders, who gave coloured fabrics bearing a message, symbol, or image relating to memory and the fight for democratic freedoms.²⁰⁴

In order to carry out the Caravans, the Amnesty Commission partnered with organizations that were well-established in the defence of human rights, such as the National Union of Students (UNE), the OAB, the National Conference of Brazilian Bishops (CNBB), the Brazilian Press Association (ABI), and universities and state governments.²⁰⁵ Marleide Ferreira Rocha, a former federal civil servant who worked with the Amnesty Commission, notes that, '[d]uring the Caravans, the voice of direct victims gained power. It was in the context of the Caravans that formerly persecuted politicians first truly gained a public voice. Previously, this had been a hypothetical situation treated as merely a possibility'.²⁰⁶ In addition to declaring amnesty - usually posthumously - for renowned public figures often considered a symbol of resistance to the dictatorship (such as João Goulart, the president unseated in the 1964 coup; Carlos Lamarca, a soldier and guerrilla leader; Leonel Brizola, a politician; Paulo Freire, a teacher; Luiz Carlos Prestes, a politician; Mário Covas, a politician; and Carlos Marighella, a teacher, and guerrilla leader), the hearings also devoted space to non-public survivors and the families of non-public victims.²⁰⁷

²⁰⁴ Comissão de Anistia (Brasil), *Relatório Anual da Comissão de Anistia 2008* (Brasília 2009).

²⁰⁵ Marleide Ferreira Rocha, 'Caravanas da Anistia: espaço público de testemunho das vítimas do terrorismo de Estado brasileiro' (XI Seminário Internacional Políticas de la Memoria - "Memorias Subalternas, Memorias Rebeldes", Buenos Aires 2018) 7.

²⁰⁶ *ibid* (twice translated: PT>ES>EN).

²⁰⁷ Maria José Coelho & Vera Rotta (eds.), *Livro dos Votos da Comissão de Anistia: verdade e reparação aos perseguidos políticos no Brasil* (Comunicação, Estudos e Consultoria, Brasília-Florianópolis 2013).

In the same vein, the Caravans allowed people's narratives to be (re) introduced into the public space, where they had previously been bound to the silent recovery of memory. They underwent a personal process of acknowledging the violations they had suffered, and successfully verbalised their experiences which could then be incorporated into the collective memory of the groups and individuals present at the sessions. Again, according to Cardozo and Abrão:

As well as truth, the Caravans produce memory. They are not limited to conveying individual recollections; they also allow collective ones to grow. What's more: they encourage social memory. Returning to tell the story of the past brings generations together. They unite those who fought against the dictatorship and for social justice in the past with those who are experiencing democracy and are responsible for widening its scope in the present. They allow us to compare past and present violations, and to detect the current imperfections in our democracy. As such, they serve as a bridge for transition. On one side is the authoritarian past, whose experiences are put on trial in a democratic context, in order to learn lessons that strengthen participation and freedom, now and in the future.²⁰⁸

The last officially recorded Amnesty Caravan hearing was the 93rd, on 6 December 2016, under the Michel Temer administration. Since that time, there has been no sign of the scheme being reactivated, indicating that the Amnesty Commission has discontinued it.

3.2.3. *Marks of Memory*

As mentioned earlier, the *Marcas da Memória* ('Marks of Memory') Project began in 2008. It involved 'supporting and developing memory initiatives and projects being rolled out by civil society and government entities, with the aim of giving visibility to the victims' memories and of building a collection of oral and audiovisual sources' (article 2 of Amnesty Commission Resolution No 1/2016). The project sought to promote the actions taken by civil society and the State in the field of memory. These were divided into four areas:

- Public hearings: actions and events promoting processes of publicly hearing the politically persecuted, their tales of the past and their relationships with the present;
- Oral history: interviews with the politically persecuted, structured according to the theoretical-methodological criteria of oral history. All the results are available in the Amnesty Memorial and can be made available in university libraries and research centres participating in the project, so that young people, society and researchers in general have access to them.

²⁰⁸ Cardozo & Abrão (n 203) 24-25 (twice translated: PT>ES>EN).

- Public appeals promoting civil initiatives: public appeals allowed for the selection of non-profit NGO projects in matters of conservation, memory, promotion and dissemination. The projects developed included documentary films, publications, artistic and photographic exhibitions, talks, musicals, film restorations, archive conservation, places of memory, theatrical productions and teaching materials;
- Publications: collections of memoir books by the politically persecuted, dissertations and doctoral theses on the dictatorship period and on amnesty in Brazil; reprints of other relevant historic works and texts; records from the annals of various political amnesty and transitional justice events. All these publications are distributed free of charge and not for profit, particularly to schools and universities.²⁰⁹

A key moment in the Amnesty Commission's public hearings was the 2008 *Os limites e possibilidades para a responsabilização jurídica de agentes públicos que cometeram crimes contra a humanidade durante períodos de exceção* (the limits and opportunities involved in holding public agents legally accountable for crimes against humanity committed during exception times) concerning the reinterpretation of the Amnesty Law. This led to the main initiative on the issue: Allegation of Disobedience of Fundamental Precept (ADPF) No 153, taken by the OAB. It sought to reinterpret the point under the Amnesty Law regarding the amnesty of state agents who were responsible for human rights violations. The hearing and its practical repercussions, however, generated friction in federal government - which I will address in more detail in chapter 4.

Four public appeals were made between 2010 and 2013, from which a total of 45 projects were chosen.²¹⁰ These included research, written publications, public archives created from dictatorship-era documents, film-documentaries, photography exhibitions, stage productions, series of events, and other initiatives relating to memory and the truth. Of the many projects chosen, we can comment on the *Trilhas da Anistia* (Amnesty Trails), a collection of memorials. The project, approved in 2012, involved the creation of plaques/totems in public places in eight cities visited by the Amnesty Caravans,²¹¹ with the aim of creating 'plaques that symbolise the people's fight against state extremism and actions that constituted serious human rights violations under the military dictatorship' (see Appendix 1).²¹²

²⁰⁹ Comissão de Anistia (Brasil), *Relatório Anual da Comissão de Anistia 2014* (Brasília 2016) 26-27 (twice translated: PT>ES>EN).

²¹⁰ According to the Amnesty Commission, no appeals for 'Marks of Memory' were made in 2014 and 2015 due to budgetary restrictions (MJSB (Brasil), 'Projetos de memória e reparação' (n 196)). There are no available records or news of appeals in later years.

²¹¹ Belo Horizonte, São Paulo, Rio de Janeiro, Curitiba, Florianópolis, Ipatinga, Porto Alegre and Recife.

²¹² Available at <www.justica.gov.br/seus-direitos/anistia/projetos/marcas-da-memoria-iii-2012> accessed 9 July 2019.

Figure 1: Activities supported under the 'Marks of Memory' project between 2010 and 2013

Films and Audiovisual	Books and Archives	Educational Projects, Exhibitions and Theatrical Productions
<ul style="list-style-type: none"> • <i>Eu me lembro</i> • <i>Repare Bem</i> • <i>Vou Contar para Meus Filhos</i> • <i>Memória cinematográfica para um tempo sem memória</i> • <i>Duas Histórias</i> • <i>Em Nome da Segurança Nacional</i> • <i>Documentário sobre Expressos políticos da Casa de Detenção do Recife (A Mesa Vermelha)</i> • <i>Festival Cinema pela Verdade</i> • <i>Nossas Histórias</i> • <i>Uma dor suspensa no tempo: Caminhos da memória na América Latina</i> • <i>Um golpe, 50 olhares</i> • <i>500 – Os bebês roubados pela ditadura Argentina</i> • <i>Labirinto de Papel</i> • <i>Juventude e Lutas Ecumênicas y Muros e Pontes</i> • <i>1964 - Um golpe contra o Brasil</i> • <i>Damas da Liberdade</i> • <i>O fim do esquecimento</i> • <i>Se um de nós se cala</i> • <i>Os Advogados contra a Ditadura: por uma questão de Justiça</i> • <i>Militares da Democracia: os militares que disseram NÃO</i> • <i>Setenta</i> 	<ul style="list-style-type: none"> • <i>Livro dos votos da Comissão de Anistia: verdade e reparação aos perseguidos políticos no Brasil y Caravanas da Anistia: o Brasil pede perdão</i> • <i>Prontuários do Fundo DEOPS</i> • <i>Advocacia em tempos difíceis: ditadura militar 1964-1985</i> • <i>Repressão e o direito à resistência: os comunistas na luta contra a ditadura (1964-1985)</i> • <i>Memória visual da ditadura no Rio Grande do Sul</i> • <i>Memórias da resistência e da solidariedade</i> • <i>Resgate da Memória Viva da Repressão Militar em Goiás</i> • <i>Memória Operária do Vale do Aço</i> • <i>Vala Clandestina de Perus</i> • <i>Contemos a nossa história: os mecanismos de repressão e perseguição política durante a ditadura – memória dos trabalhadores metalúrgicos e militantes de São Paulo</i> • <i>Acervo da Associação 64/68</i> • <i>Acervo Virtual da Anistia</i> • <i>Depoimentos para a História: a resistência à ditadura militar no Paraná</i> • <i>Digitalização e Disponibilização da Série Prontuários do Fundo DEOPS</i> • <i>Memórias Ecumênicas</i> • <i>Protestantes</i> 	<p><u>Educational Projects</u></p> <ul style="list-style-type: none"> • <i>Resistir é Preciso</i> • <i>Ainda Hoje Existem Perseguidos Políticos no Brasil (película y libro)</i> • <i>Memória e Compromisso</i> • <i>1964: 50 anos depois</i> • <i>Semana por Memória, Verdade e Justiça no Tocantins</i> • <i>Trilhas da Anistia (memoriales)</i> <p><u>Exhibitions</u></p> <ul style="list-style-type: none"> • <i>Anistia e Democracia: para que não se esqueça, para que nunca mais aconteça</i> • <i>Sala Escura da Tortura</i> • <i>Arpilleras da resistência política chilena</i> • <i>Reparação – Memorial da Democracia Pernambuco</i> • <i>Abertura da vala do cemitério Dom Bosco - Perus</i> • <i>Golpe 50 anos depois: memória, verdade e justiça</i> <p><u>Theatrical Productions</u></p> <ul style="list-style-type: none"> • <i>Filha da Anistia</i> • <i>A Prova de Fogo</i> • <i>Frei Tito: vida, paixão e morte</i> • <i>Torquemada: Resgatando memórias de opressão do passado ao presente</i> • <i>Morro com um país – Cenas Sobre a Violência de Estado</i>

Source: Created from data obtained on the Amnesty Commission website²¹³ and in the 2014 annual report.²¹⁴

²¹³ MJSP (Brasil), 'Projetos de memória e reparação' (n 196).

²¹⁴ Comissão de Anistia (Brasil), 'Relatório Anual da Comissão de Anistia 2014' (n 209).

The Amnesty Commission also commissioned *Cinema pela Verdade* (Cinema for Truth) events. These were free cinema events that toured universities, screening documentary films or dramatizations of events that took place under civil-military dictatorships in Latin America. Various films were shown during the events, as well as films produced with the financial backing of the Marks of Memory scheme - such as *Duas Histórias* and the documentary *Repare Bem*, which received national film awards. This strengthened the achievements of those initiatives.

Figure 1 shows that the public strongly felt the effects of the memory initiatives involved in and/or supported by the 'Marks of Memory' projects. In terms of democratization and the reach of those initiatives, they constituted the Amnesty Commission's greatest action in the field of memory and truth. The 'Marks of Memory' initiative allowed artists, academics, and civil organizations to bring creativity to the process of state policies on memory. The single vision of these social groups widened the diversity of State-backed memory initiatives. This led to an interaction between memories of politics and politics of memory that allows the two to become intertwined. However, rather than being superimposed the one upon the other, there is dialogue between them, acknowledging 'the plurality and diversity of existing memories'.²¹⁵ It is the diversity of the 'marks' of memory that allows them to be shared more widely.

3.2.4. *Testimony Clinics*

During and in the aftermath of the dictatorship, civil organizations and bodies did devote psychological attention to individuals and groups affected by the regime. Yet a state policy focusing on this area and with care being taken to avoid circumstances of revictimization, had not been formed, until then. Thus, on the path towards focusing reparations policies on new areas, and in agreement with the literature on reparations²¹⁶ and the IHR Court's rulings in Brazil in the Araguaia

²¹⁵ Bruno Groppo, 'Las políticas de la memoria' (2002) 11-12 *Sociohistórica* 196; Rabotnikof (n 169) 260-61. [Translation: ES>EN.]

²¹⁶ Abrão & Torelly, 'Justiça de Transição no Brasil' (n 189); De Greiff (n 190) 408-09.

case,²¹⁷ the Testimony Clinics - started in 2012 and shut down in 2017 - aimed to focus on psychological reparations for people, families and groups affected by the 1964 civil-military dictatorship. The reparations and memory policy consisted of an initiative supported by the Amnesty Commission and applied by mental health institutions bound to the Commission by way of a formal agreement.

According to article 6 of the National Policy for the Promotion of Transitional Justice and Political Amnesty, the project 'consists of shaping and maintaining the network of support clinics and offering psychological care to those affected by state violence between 1946 and 1988, to anyone requesting political amnesty, and to their family members'. In addition to 'providing treatment for the victims of human rights violations and political persecution' and 'training professionals and putting together reference materials for wider professional use', the same Policy says that the project also had²¹⁸ the aim of 'promoting events that spread word of the project and its methodology among the public, thus creating space for debate and for reflection on the psychological marks left by state violence'.

It is specifically that last objective that is tightly linked to collective memory. The project's other objectives contribute to the construction

²¹⁷ 'The Court finds, as it has done in other cases, that a measure of reparation that provides appropriate care for the physical and psychological effects suffered by the victims is necessary. Consequently, the Court deems it convenient to order the State to provide the victims, per their requests, free of charge and immediately, appropriately, and effectively, with the medical and psychological or psychiatric care by means of public health institutions. Therefore, the specific injuries or impairments of each person must be considered by means of a prior physical and psychological assessment. Moreover, the treatment must be provided in Brazil for the time necessary and it must include the provision, free of charge, of medication that may be required. In particular, psychological and psychiatric treatment must be provided by State personnel and institutions specialized in attending to victims of acts of violence such as those that occurred in this case. In the circumstance that the State lacks the personnel or institutions that may offer this level of necessary care, it must have recourse to specialized private or civil society institutions. When providing this treatment, the specific circumstances and needs of each victim must be considered, so that they are offered individual and family treatment, as agreed upon by each of them, and following an individual evaluation. Lastly, this treatment must be provided, insofar as possible, in the institutions nearest to their place of residence. In the same way, those who requested this measure of reparation, or their legal representatives, have six months from the notification of this Judgment to inform the State of their specific requests for psychological or psychiatric treatment' (IHR Court, *Gomes Lund et al* ("Guerrilla del Araguaia") *Vs. Brazil*, Inter-American Court of Human Rights, Series C No. 219 (24 November 2010) paragraphs 267-68).

²¹⁸ In mid-2017, the Psychoanalytic Institution APPOA - which had an agreement in place with the Amnesty Commission - sought to extend the agreement by approximately one additional year due to the funds available for continuing activities, despite the original term of that legal instrument having ended. Towards the end of 2017, the MPF took this to the Federal Justice, requesting that all centres that had an agreement in place with the Ministry of Justice be kept, in line with the APPOA Institution's request. However, it did not secure the extension. Neither has there been any sign of the project's continuation since the end of its second phase.

of individual memory, which eventually leads to a collective memory. However, the Clinics' public mode of operation paved the way for a culture of memory, regarding not just to the events that took place under the civil-military dictatorship but also the subjective consequences of State-inflicted political persecution and terrorism, on individuals and groups who were directly or indirectly victimised during the dictatorship. That is to say, as well as generating psychological reparations, they helped build memory and promote truth through the telling of experiences:

By providing the context of a clinic for the telling of experiences of violations, the project allows the psychological overload of traumatic content to be heard - perhaps for the first time - as a testimony. This consolidates narratives that give shape to memory and the chance to speak, making possible psychological reconstruction in the affected persons.²¹⁹

The Clinics played a relevant role in individual reparations - carefully rebuilding the traumas of the terror each individual has suffered in the past. But indeed, as noted by Marilena Deschamps Silveira, psychoanalyst with links to the APPOA Institute (one of the main hubs for the Clinics), the stories shared also became memories for the professionals working in the Clinics, or for the victims who had suppressed memories of the traumas suffered:

At one of the first meetings of the Work Group, when we looked at the historical data from dictatorship-era Santa Catarina, one of our colleagues saw the events that took place in that state and came to a shocking realisation: 'Incredible... It looks like none of this happened here... Did this happen here too?' The Work Group, then, gave rise to a revealing question about the scale of silencing across the social collective. The violence committed by the dictatorial State in Santa Catarina's past was not historicised in the social collective.

On another occasion, during a discussion about the Project at a meeting for the Santa Catarina Collective for Memory, Truth and Justice, and we pointed out the possibility of setting up a Witness Group, we heard one person who had been a victim of the effects of the dictatorial violence make the following comment: 'I'd like to take part in this witness group... But could I? Because, actually, I can't remember anything!' So we found ourselves with a story that hinted that silencing was ingrained in individuals.²²⁰

²¹⁹ MJSP (Brasil), 'Clínicas do Testemunho', *Ministério da Justiça e Segurança Pública* (2017) <www.justica.gov.br/seus-direitos/anistia/clinicas-do-testemunho-1> accessed 10 July 2019 (twice translated: PT>ES>EN).

²²⁰ Marilena Deschamps Silveira, 'Clínicas do Testemunho: reparação psíquica e construção de memórias' (September/December 2017) 4(3) *Revista Memore* - "Especial dossiê Marcas da Memória: direitos humanos, justiça de transição e anistia" 99 (twice translated: PT>ES>EN).

Two public appeals to instate legal agreements were issued for the project. Each appeal set in motion a phase. The first took place between January 2013 and December 2015 and the second between January 2015 and December 2017.²²¹ Until 2017 - the last year in which the public policy was active - the five centres selected for agreements plus the five member centres of the programme linked to the *Clínicas do Testemunho – Centros de Capacitação para Reparação Psíquica e Enfretamento da Violência* (which specialised in professional training to deal with the psychological impact of state violence) formed the *Rede Clínicas do Testemunho* ('Testimony Clinics Network').²²²

The book *Clínicas do Testemunho: reparação psíquica e construção de memórias*, published in 2014, backed by the Amnesty Commission and organised by the *Sigmund Freud Associação Psicanalítica* (a clinic participating in the project), was the result of the project's first years of work. It was structured around the themes of psychological reparations and the construction of memories.²²³

²²¹ The project's first stage involved the Instituto Projetos Terapêuticos (Rio de Janeiro), Instituto Sedes Sapientiae (São Paulo), Instituto Projetos Terapêuticos (São Paulo) and the Sigmund Freud Associação Psicanalítica (Rio Grande do Sul). The second involved the Instituto de Estudos da Religião – ISER (Rio de Janeiro), Instituto Sedes Sapientiae (São Paulo), Instituto de Estudos da Religião – ISER (São Paulo), Instituto APPOA – Clínica, Intervenção e Pesquisa em Psicanálise (Rio Grande do Sul) and the Instituto APPOA – Clínica, Intervenção e Pesquisa em Psicanálise (Santa Catarina) (MJSP (Brasil), 'Clínicas do Testemunho' (n 219)).

²²² MJSP (Brasil), 'Clínicas do Testemunho' (n 219).

²²³ Sigmund Freud Associação Psicanalítica (ed), *Clínicas do testemunho: reparação psíquica e construção de memórias* (Criação Humana, Porto Alegre 2014).

3.2.5. *Memorial of Brazilian Political Amnesty*

'Places of memory', is the term used to refer to geographical locations at which human rights violations were committed under a recent dictatorial past, which have been devoted to stimulating reflection on the past or providing symbolic reparations to victims of the violations. In Brazil there is no strong tradition of such places, although a few such initiatives can be found in some of the country's states.²²⁴ Other state-level projects were created for this purpose, but without a scheduled conclusion:

- the Memory and Human Rights space (in the old Rio de Janeiro DOPS building, disputed by groups who support the creation of the Civil Police Museum at that location);
- other Rio de Janeiro State initiatives such as the Barra Mansa Memory Centre (to be installed in the building of the old Armoured Infantry Army Battalion) and the Petrópolis Memory Centre (a project that was expected to be located in the building from which the 'Petrópolis Home of the Dead' operated, a clandestine dictatorship-era detention centre); and
- the Ico Lisboa Memory Centre (in the former DOPS building in Porto Alegre, Rio Grande do Sul).²²⁵

²²⁴ In the State of São Paulo, this is the case for at least three memorials. The 'Resistance Memorial' (formerly the 'Freedom Memorial'), devoted to the resistance in São Paulo and Brazil in the 20th century, was installed in the former São Paulo State Department of Political and Social Order (DEOPS/SP) in 2009 after claims from former political prisoners and the family members of the dead and disappeared, and is today a point of reference for the matter (Ana Paula Brito, 'Rompiendo el silencio institucionalizado en Brasil: los memoriales sobre la dictadura y las políticas públicas de memoria' (June 2018) 8(16) *Aletheia* 7-8). The 'Memorial of the Fight for Justice' is in the building in which Military Criminal Trials took place during the dictatorship (ibid 9). And the *Portal de Pedra*, which 'remains from the facility where the Presidio Tiradentes (which held political prisoners) operated, and the building that served the Information Operations Detachment – Centre for Internal Defence Operations (DOI-CODI)', a place that is 'far from receiving any project that uses it as a place of memory, proving the absence of a systematic policy for conserving such places'. It is also 'subject to weather damage, with the imminent bad weather endangering the *marcas* that are still recorded in that building' (Elson Mattos Tavares da Silva, 'Da Ditadura à Democracia: Os lugares da memória na transição política no Brasil e na Argentina' (IX Seminario Internacional Políticas de la Memoria - "40 años del golpe cívico militar: reflexiones desde el presente", Buenos Aires 2016)). Two memorials can be found in the country's north east, created 'with little publicity or financing from the government' (Brito, ibid): the Resistance Memorial (in the state of Ceará), located in an old dictatorship-era prison, and the Memorial of the Struggles and Peasants' Leagues (in the state of Paraíba) in the house where João Pedro Teixeira, leader of the region's Peasants' Leagues died (ibid).

²²⁵ Brito (n 224) 10-11.

In July 2009, the first public hearing was held in which the Ministry of Justice presented a project to build the ‘Memorial of Brazilian Political Amnesty’, beginning by renovating Coleginho, a UFMG building in the city of Belo Horizonte. It would be the first memorial to be created with the federal government’s direct involvement. The idea was created by the Amnesty Commission in 2008, and its creation formalised by the Ministry of Justice with *Portaria*²²⁶ GM No 858 of 13 May 2008 and *Portaria* No 203 of 9 February 2010.²²⁷

One of the Brazilian State’s points of contention over the *Gomes Lund et al. (‘Guerrilha do Araguaia’)* IHR Court case (2010) was the statement on processes for creating a memorial about the dictatorship in Brazil. The memorial installations would make public the cases submitted to the Amnesty Commission as well as archives and documents either handed over by the government, institutions or individuals, or to which those persons or bodies granted access.

75. The task of the Memorial of Brazilian Political Amnesty will be to reveal the ideals, movements and utopia that inspired the actions of the thousands of people who were persecuted for disagreeing with the political regime acting in the country at the time. The guiding principle would be the Brazilian people’s fight to secure democracy and amnesty.

76. The Memorial and its museography is structured according to the following topics: the history of the people’s right to resist tyranny, dictatorship, and totalitarianism; the issue of political persecution and the rejection of crimes against humanity; the right to resist, with due respect for and recognition and remembrance of those who fought; the key role of civil institutions, political parties, the press, intellectuals, students, and workers; the fight for redemocratization; the constant strife of the politically persecuted for the right to truth, memory and justice.²²⁸

Decree No 8,031 of 20 June 2013 formalised the Amnesty Commission’s responsibilities as ‘shaping and promoting actions and projects on reparations and memory, without prejudice to the responsibilities of other entities’ and ‘installing and maintaining the Memorial of Brazilian Political Amnesty and its database’.²²⁹

²²⁶ *Portarias* are administrative acts produced at Executive level, issued by Ministries, Secretariats or other governmental entities in Brazil. The original Portuguese word is used here.

²²⁷ Comissão de Anistia (Brasil), ‘Relatório Anual da Comissão de Anistia 2014’ (n 209).

²²⁸ IHR Court, ‘Gomes Lund et al (‘Guerrilla del Araguaia’) Vs. Brazil’ (n 217), Brazilian state answer, para 75-76 (twice translated: PT>ES>EN).

²²⁹ The decree (Brasil, ‘Decreto Nº 8.031, de 20 de junho de 2013’, *Diário Oficial da União* (21 June 2013) <www.planalto.gov.br/ccivil_03/Atos2011-2014/2013/Decreto/D8031.htm> accessed 7 April 2020, was revoked in 2020, by the President of the time, Jair Bolsonaro, by means of Decree No. 10,223 of February 5, 2020, which reduced of the Amnesty Commission’s remit to analysing political amnesty requests.

Article 11 of the Resolution on the National Policy for Promoting Transitional Justice set forth that the Amnesty Memorial would be integrated into the administrative structure of the Amnesty Commission and constitute a ‘long-term museographical exhibition and a Research and Documentation Centre’, which would be an organised and centralised collection of the results of all the actions taken under the National Policy, as well as preserving the repository of amnesty requests submitted to the body and other documentary heritage donated to the Amnesty Commission’.

Over the years there was no sign of any intention to terminate the Memorial,²³⁰ until 13 August 2019 when the Human Rights Minister under the Jair Bolsonaro administration, Damares Alves, announced the suspension of memorial works, declaring that the Amnesty Commission would, from that point on, be dedicating itself to another ‘more important and essential task’, limited to the appraisal of pending amnesty requests.²³¹ In September, 11 people linked to the UFMG were accused by the Federal Police of alleged irregularities in the memorial’s construction, which led the Federal Public Ministry to approach the Federal Justice to request the continuation of the works.²³² Meanwhile,

²³⁰ The most recent Amnesty Commission report available to the public, from 2014 (‘Relatório Anual da Comissão de Anistia 2014’ (n 209) 23-26), gave an account of the continuation of the building works and setting up of the museographical project. On the other hand, following a Federal Public Ministry information request submitted to the Amnesty Commission, the latter replied that the works had been suspended as of 9 September 2016 (MPF (Brasil), ‘Recomendação MPF/PRMG N° 48, de 19 de dezembro de 2017’, *Ministério Público Federal – MPF (Brasil)* (19 December 2017) <www.mpf.mp.br/mg/sala-de-imprensa/docs/recomendacao-mpf-memorial-da-anistia> accessed 15 July 2019). Towards the end of 2017, the Federal Police (PF) began an operation entitled ‘*esperança equilibrista*’ (tightrope walker’s hope), to investigate the Memorial not being built and the fact that resources intended for its construction had been diverted towards expenses unrelated to the project (CGU (Brasil) (Redacción), ‘Operação Esperança Equilibrista investiga desvios de recursos na UFMG’, *Controladoria-Geral da União (Brasil)* (6 December 2017) <www.cgu.gov.br/noticias/2017/12/operacao-esperanca-equilibrista-apura-desvios-de-recursos-na-ufmg> accessed 9 July 2019). The operation was criticised by songwriters João Bosco and Aldir Blanc for the allusion made to their song *O Bêbado e a Equilibrista* (a symbol of the democratic transition), as well as by the Federal Prosecutor for Citizens’ Rights (PFDC/MPF) and by Dilma Rousseff, who affirmed that the ‘shadow of the State of Exception is continuing to assert itself over institutions’ (J Bittencourt, ‘Corregedoria da PF não vê irregularidades em operação na UFMG’, *Revista Fórum* (4 January 2018) <<https://revistaforum.com.br/corregedoria-da-pf-nao-ve-irregularidades-em-operacao-na-ufmg/>> accessed 9 July 2019).

²³¹ Veja (Redacción), ‘Memorial da Anistia, que já custou R\$ 28 mi, será cancelado, diz Damares’, *Veja* (13 August 2019) <<https://veja.abril.com.br/politica/memorial-da-anistia-que-ja-custou-r-28-mi-sera-cancelado-diz-damares/>> accessed 17 February 2020.

²³² O Tempo (Redacción), ‘MPF cobra da União retomada de obras do Memorial da Anistia em 90 dias’, *O Tempo* (1 October 2019) <www.otempo.com.br/cidades/mpf-cobra-da-uniao-retomada-de-obras-do-memorial-da-anistia-em-90-dias-1.2244027> accessed 17 February 2020.

more than 50 social organizations and bodies working on issues of memory and truth criticised the government's decision and questioned the accusations.²³³ The result seems - at least for now (2020) - to be an incomplete conclusion for the project and idea of a Memorial of Political Amnesty in Brazil.

3.3. PRESIDENCY OF THE REPUBLIC AND STATE MINISTRIES

In addition to policies on memory promoted by specific bodies of the State and intended to further matters of Transitional Justice in Brazil - such as the reparations and memory commissions discussed earlier - it is important to cover initiatives instated directly by the Presidency of the Republic, as well as those set up independently by the ministries under the federal government, in line with each ministry's powers and responsibilities.

3.3.1. *Presidency of the Republic*

In terms of concrete actions taken directly by the Presidency of the Republic and relating to state politics on reparations, memory and truth about the recent past, it is possible to highlight certain decrees and bills brought forward by the Executive. Of the laws resulting from bills passed in Congress, Law No 12,260 of 21 June 2010 stands out. It recognised the Brazilian State's responsibility for destroying the UNE headquarters in 1964, making it the first collective reparations law, under which there were two compensatory payouts - in 2010 and 2012 - from the Amnesty Commission budget.²³⁴ Most notably, Laws 12,527 and 12,528 of 18 November 2011 - the Law of Access to Information (LAI) and the law creating the CNV - also originated as bills brought by the Executive. The background and establishment of the CNV are studied later, in point 3.4.

It is however worth taking a look at certain regulations laid down by the Presidency, under three focal points: the management of documents

²³³ Luis Nassif, 'Nota Pública contra o cancelamento do Memorial da Anistia', *Jornal GGN* (16 August 2019) <<https://jornalgen.com.br/noticia/nota-publica-contr-o-cancelamento-do-memorial-da-anistia/>> accessed 17 February 2020.

²³⁴ Torelly, 'Justiça de Transição e Estado Constitucional de Direito' (n 168) 249.

created under the terrorist State, the search for the remains of those who died in the Araguaia guerrilla conflict and the PNDH-3, all initiatives which saw the close participation of the Presidency of the Republic and its advisory bodies - particularly the Office of the Chief of Staff, whose head between 2005 and 2010 would become the next President of Brazil: Dilma Rousseff.

3.3.1.1. Document management

The publication of the *Brasil: Nunca Mais* report in 1985 gave Brazilian society access to the archives of Superior Military Court trials against victims of political persecution. This only happened as a result of an initiative from an organised civil society.²³⁵ With the 1988 Federal Constitution, the State also introduced new rules on access to information, laying down rights and restrictions.²³⁶ These were strengthened with the promulgation under the Fernando Collor de Mello administration of Law No 8,159 of 8 January 1991, the 'National Policy on Public and Private Archives'.²³⁷ The FHC government also published two Presidential Decrees implementing that law.

One of the central debates within the CEMDP's actions, in its process analysis phase, concerned granting the public access to official archives from the dictatorship. Yet this policy fell to the discretion of the Presidency of the Republic. When Luiz Inácio Lula da Silva became President, the Commission had great expectations that such access would be given; however, government changes with regard to the investigations in the Araguaia case (the creation of a new parallel inter-ministerial committee) and the new presidential decree relating to document management were timid, in terms of publishing documents.²³⁸

²³⁵ Mariana Joffily, 'Direito à informação e direito à vida privada: os impasses em torno do acesso aos arquivos da ditadura militar brasileira' (January-June 2012) 25(49) *Estudos Históricos* 134.

²³⁶ 'The Constitution promulgated in 1988 grants *habeas data*, giving individuals the right to access information about them that is "held in the records or databases of government or public entities" (Chapter 1, article 5, subsection LXXII). It also grants citizens the right to "receive from the public bodies information of interest to them personally, to the collective or generally", however it lays down restrictions with regard to "[data] whose confidentiality is indispensable for the security of society and the State"³⁸ (Idem, subsection XXXIII). Moreover, it considers "the relations, private life, honour and image of persons" inviolable, "guaranteeing the right to compensation for any material or moral damage that may arise if they are violated"³⁸ (Idem, paragraph X)' (Joffily (n 235) 134 (twice translated: PT>ES>EN)).

²³⁷ *ibid.*

²³⁸ CEMDP (Brasil), 'Direito à Memória e à Verdade' (n 171) 43; Schmidt (n 172) 140; Joffily (n 235) 136.

With Decree No 5,301 of 9 December 2004, President Lula da Silva established the Commission for Inquiry and Analysis of Secret Information, introducing a Provisional Measure which was converted into Law No 11,111 of 5 May 2005, ‘with the aim of coming to a decision over restricted access to documents’ (article 4). This law - Brazil’s first on the issue of access to information (alongside the provisions of Law No 8,159/1991, implementing article 5, *caput*, subsection XXXIII of the Federal Constitution) - was not exempt from criticism from, for example, academic research associations and entities such as the *Movimento Desarquivando o Brasil* (‘Unarchiving Brazil Movement’). This highlighted the continued delays and access restrictions that remained in national policy on dictatorship-era archives. Further, the UN Human Rights Committee declared itself in favour of opening up the archives that would allow instances of torture to be investigated.²³⁹

In 2005, the Presidency ruled, with Decree No 5,584, that archives produced or received between 1964 and 1990 by the defunct National Information Service (SNI), National Security Council (CSN) and General Investigations Commission (CGI), at the time installed under the Brazilian Intelligence Agency (ABIN), should be handed over to the National Archive, for which the Office of the Chief of Staff was responsible at that time.²⁴⁰ Further still, the archives should be made available to the public.²⁴¹

Another notable inclusion in the Presidency of the Republic policies on documentation was the creation of the *Centro de Referência das Lutas Políticas no Brasil (1964-1985) - Memórias Reveladas*. This was set up on 13 May 2009 and coordinated by the National Archive of the Office of the Chief of Staff. Beginning with archives put together in the National Archive from 2005 onwards, the project in question sought to share documents from the 1960s, 1970s and 1980s and to produce studies on the dictatorial period.²⁴²

²³⁹ UFSC, ‘Abertura dos arquivos públicos – Moções’, *Laboratório de Sociologia do Trabalho da Universidade Federal de Santa Catarina (LASTRO/UFSC)* (28 October 2005) <http://lastro.ufsc.br/?page_id=1470> accessed 15 July 2019.

²⁴⁰ Brasil, ‘Decreto N° 5.584, de 18 de novembro de 2005’, *Diário Oficial da União* (18 November 2005) <www.planalto.gov.br/ccivil_03/ato2004-2006/2005/decreto/D5584.htm> accessed 9 July 2019.

²⁴¹ CEMDP (Brasil), ‘Direito à Memória e à Verdade’ (n 171) 44.

²⁴² The project’s original specific objectives are available at <www.memoriasreveladas.gov.br/index.php/objetivos> accessed 23 June 2019.

Two *Portarias* form the normative background principles for the establishment of the *Memórias Reveladas* (Unveiled Memories) Project.²⁴³ Inter-Ministerial *Portaria*²⁴⁴ No 205 of 13 May 2009 issued a public appeal to natural and legal persons, public servants and soldiers, asking them to hand over any documents relating to the dictatorial period (between 1 April 1964 and 15 March 1985) in their possession to the National Archive.²⁴⁵ And *Portaria* No 204 of the Office of the Chief of Staff,²⁴⁶ also dated 13 May 2009, was responsible for actually creating the Unveiled Memories project, intended as a ‘space in which produced or accumulated documents or information about the political regime can be brought together and shared’ (article 1).²⁴⁷

The choice of dates used to define the dictatorship in both *Portarias* is particularly noteworthy: they do not fall back on the ‘imaginary period’ established under the Constitution (1946-1988, later repeated in the Amnesty Commission and CNV laws). Neither do they revert to the CEMDP’s time frame (1961-1979), which only includes the period of authoritarian rule. Moreover, there is no reference to 31 March as the date of the coup but instead to 1 April. In the context of the historical debate going on in Brazil, regime sympathisers seek to avoid celebrating the ‘revolution’ they supported on 1 April, as it is the *Dia da Mentira* in the country - April Fool’s Day.²⁴⁸ This detail certainly had no greater public repercussion, and perhaps slipped by unnoticed by conflicting voices within the ranks of federal government; however, it reflects the effort of government authorities involved in these policies to question

²⁴³ Other background on the founding regulations and the structure of this project can be found at <www.memoriasreveladas.gov.br/index.php/legislacao> accessed 18 June 2019.

²⁴⁴ Coalition between the entities classed as ministries under the Office of the Chief of Staff, the Institutional Security Office (GSI) and the Attorney-General of the Union (AGU), and between the Ministries of Justice, Defence, Foreign Affairs and Human Rights (the latter was, at the time, the Special Secretariat and was classed as a ministry).

²⁴⁵ CC/GSI/MJ/MD/MRE/AGU/SEDH (Brasil), ‘Portaria Interministerial CC/GSI/MJ/MD/MRE/AGU/SEDH N° 205, de 13 de maio de 2009’, *Diário Oficial da União, n° 90, Seção 1*, 2 (14 May 2009) <www.memoriasreveladas.gov.br/administrador/component/com_simplefilemanager/uploads/582f5933b9a0b7.96756959/Portaria%20205.pdf> accessed 9 July 2019.

²⁴⁶ Then headed by minister Dilma Rousseff, future President of the Republic.

²⁴⁷ CC (Brasil), ‘Portaria CC N° 204, de 13 de maio de 2009’, da Casa Civil da Presidência da República, *Diário Oficial da União, n° 90, Seção 1*, 2 (14 May 2009) <www.memoriasreveladas.gov.br/administrador/component/com_simplefilemanager/uploads/582f58e906cb30.85684117/Portaria%20204.pdf> accessed 9 July 2019 (twice translated: PT>ES>EN).

²⁴⁸ Cristiane Capuchinho, ‘31 de março ou 1° de abril: Dia do golpe é motivo de disputa’, *Uol* (27 March 2014) <<https://educacao.uol.com.br/noticias/2014/03/27/31-de-marco-ou-1-de-abril-dia-do-golpe-e-motivo-de-disputa-ideologica.htm>> accessed 15 July 2019.

memories handed down by the 1964 regime, which had remained undisputed prior to that point. This was done by increasing the number of official federal government memory initiatives.

An audiovisual campaign was launched on radio, television and internet, seeking contributions that would enrich the Unveiled Memories project database. It requested any information on political disappearances and documents on the military period. The project led to the *Prêmio de Pesquisa Memórias Reveladas*, a research competition. Competitors were asked to submit monographical research projects studying the period between 1964 and 1985. By 2018, four editions of the award had taken place. Furthermore, the project cemented collaborations with various institutions, such as unions and universities.²⁴⁹

Armed Forces representatives repeatedly asserted that there were no archives created by the intelligence bodies that served as proof of repression during the dictatorship, as they had been destroyed.²⁵⁰ Despite this, the Armed Forces handed around 50,000 documents over to the National Archive in 2010. The documentation had been cleaned up, but it was there.²⁵¹

In 2011, a bill from the Executive managed to secure the passing of a new Law of Access to Information (LAI). Law No 12,527 of 18 November 2011 revoked Law No 11,111/2005 and other provisions governing national policy on archives. That same day, Law No 12,528 was passed. It established the CNV, which was installed under the Office of the Chief of Staff. This demonstrated the need for a new regulation on access to state documents - specifically, for the Commission to gain access. Article 24, Section 1 of the LAI reduces the term for which documents are kept classified. It establishes three categories, which would come into force six months after the law's promulgation: restricted (5 years), secret (15 years) and ultra-secret (25 years). The period of restriction to access can be renewed (for the same amount of time) just once, making 50 years the longest period for which documents (classified as ultra-secret) can be sealed, pursuant to art 35, section 2.

Despite these efforts, Torelly reminds us that there is still no public access to the CISA (Aeronautical Security Information Centre), CIE

²⁴⁹ Available at <www.memoriasreveladas.gov.br/index.php/historico> accessed 23 June 2019.

²⁵⁰ Schmidt (n 172) 145; Joffily (n 235) 137.

²⁵¹ Joffily (n 235).

(Army Information Centre) and Cenimar (Navy Information Centre) archives, supposedly destroyed but allegedly in private possession.²⁵² They are vital archives for ‘identifying and making public the tools used to commit human rights violations and the ramifications on the various state systems and on other civil agencies, as well as for identifying instances of torture, death and disappearance’.²⁵³

In the same vein, Suellen Neto Pires Maciel notes:

In that way, the passing of time gives an archive an historical value and innumerable ways of reading it. Some of the many innumerable questions one may ask about the official archives which, over the many years, remained inaccessible, are: Who produced them? Is it possible to infer the maker’s beliefs? For whom was the document intended? What is there between the lines and what is the context in which the document was produced? These readings allow a document to be viewed in a way that evokes the past. [...] Furthermore, an archive can also be considered a place of memory and a place of history.²⁵⁴

The Brazilian federal governments’ policy on documentation, which also covers documents on the recent past, is an important tool for and an approach to enabling the unveiling of identities, events and discussions officially recorded by the State - especially those concerning national security. The intention is to use these archives and, through an adequate historiography, continue to rebuild historic memory and truth about this period, so as to further contribute to the shaping of collective memory. As the term expires for which these documents must remain classified, and with the LAI in force, much more information on the recent past will come to light in the years to come.

3.3.1.2. *Searching for bodies in the Araguaia*

The Araguaia guerrilla group was the last hub of armed resistance to the military regime. It was made up of militants from the Communist Party of Brazil (PCdoB) which set itself up on the shores of the Araguaia River in the south of the state of Pará, as well as indigenous peasants.

²⁵² Torelly, ‘Justiça de Transição e Estado Constitucional de Direito’ (n 168) 289-90.

²⁵³ *ibid.*

²⁵⁴ Suellen Neto Pires Maciel, ‘La experiencia traumática brasileña: notas para una reflexión inicial sobre los desafíos de la memoria y del trabajo con los documentos’ (IX Seminario Internacional Políticas de la Memoria – “40 años del golpe cívico militar: reflexiones desde el presente”, Buenos Aires 2016) 11 (twice translated: PT>ES>EN).

By April 1972, it had around 90 members. Between then and 1975, the Armed Forces executed nine secret operations involving 4,000 army agents aiming to eradicate the guerrilla group. These operations led to the disappearance of 70 people, while around 400 peasants were taken prisoner and tortured. The guerrilla was wiped out.²⁵⁵

In 1982, families of the dead and disappeared began legal proceedings to address the State's repression during the Araguaia guerrilla Conflict in the early 1970s. As a result, the condemnation of the Union (the name used to refer to the Federal Republic of Brazil as a legal person) was published in 2003, ruling that the archives must be opened and the bodies of those who died or disappeared during the conflict located. The Attorney-General of the Union (AGU) appealed to the superior courts on behalf of the Union until 2007, when the ruling against the State was made final.²⁵⁶ Nevertheless, from 1995 it began adopting measures that sought to follow some of the court rulings, particularly those regarding the search for missing bodies, while the case was being processed in the IACHR.

It was in that context, during the first year of Lula da Silva's government, that Decree No 4,850 of 2 October 2003 was published. It created an Inter-Ministerial Commission '[whose] aim was to obtain information allowing the bodies of those involved in the Araguaia conflict to be located, in order to then identify, transfer and bury them, and also to amend their respective death certificates'.²⁵⁷ The Ministries of Justice, Defence, Human Rights, and also the Office of the Chief of Staff and the Attorney General of the Union (AGU) were involved in the Commission. The Commission was initially given a term of 120 days for its work. Decree No 5,021 of 23 March 2004 extended this by another 120 days.

²⁵⁵ Viviana Krsticevic & Beatriz Affonso, 'A dívida histórica e o Caso Guerrilha do Araguaia na Corte Interamericana de Direitos Humanos impulsionando o direito à verdade e à justiça no Brasil' in P Abrão P, LA Payne & MD Torelly (eds), *A Anistia na Era da Responsabilização: O Brasil em Perspectiva Internacional e Comparada* (Ministério da Justiça-Comissão de Anistia/Oxford University-Latin American Centre, Brasília/Oxford 2011) 359-363.

²⁵⁶ *ibid* 363.
²⁵⁷ Brasil, 'Decreto Nº 4.850, de 2 de outubro de 2003', *Diário Oficial da União* (3 October 2003) <www.planalto.gov.br/ccivil_03/decreto/2003/D4850.htm> accessed 7 April 2020. This decree was revoked in 2020 by the President at that time, Jair Bolsonaro, with Decree No 10,223 of 5 February 2020. This consolidated the elimination of the Perus and Araguaia Work Groups (GTs), already set in motion months prior by Decree No 9,759 of 11 April 2019. The latter decree shut down boards and bodies that enjoyed civilian participation and were connected to the federal public administration, such as the aforementioned GTs. This is explained in more detail at the end of the present point.

The creation of this Commission generated tension with CEMDP members, who saw the inter-ministerial group as an attempt to negate the work of the Special Commission. One of the main arguments against the new commission was that it made a State matter a government one, at that historic moment in which the CEMDP was beginning the search for bodies.²⁵⁸ Between 2006 and 2007 the situation calmed, as the Inter-Ministerial Commission published its final report, containing a series of recommendations including: 1) the heads of the Armed Forces should hand over information required by the Federal Justice; 2) the archives concerning the Araguaia military operations should be opened; 3) changes should be made to the legislation on archives in force at the time; 4) a permanent channel of cooperation and data exchange should be established between the Ministry of Defence and the CEMDP, reasserting the latter's responsibility to search for bodies and return them to their families.²⁵⁹

Amidst the IACHR's movements to send the Araguaia case to the Inter-American Court of Human Rights (IHR Court), as a result of what it considered an insufficient response from the Brazilian State to the Commission's investigation of the case,²⁶⁰ the Minister of Defence, Nelson Jobim, published *Portaria* No 567 of 29 April 2009. That *Portaria* created a work group 'whose aim was to coordinate and execute, in accordance with suitable standards of sufficiently scientific methodology, the actions necessary for locating, recovering and identifying the bodies of guerrilla fighters and militants from the so-called *Guerrilha do Araguaia* (Araguaia guerrilla conflict)' (Article 1). The work group would include representatives of the Army Command, the Pará State government and the government of the Federal District, as well as those of other bodies and entities at the Defence Minister's discretion. It would have a year to complete its work, with the option to extend.²⁶¹

²⁵⁸ CEMDP (Brasil), 'Direito à Memória e à Verdade' (n 171) 43.

²⁵⁹ *ibid.*

²⁶⁰ Paragraph 38 of the IACHR report (and paragraph 22 of the IHR Court ruling, condemning the Brazilian State) indicates that 'Brazil initially had two months to present its report on the completion of the recommendations in Background Report No 91/08. That term was extended twice, and a final deadline was set for 22 March 2009. Regardless, on 24 March 2009 the State presented a partial report and requested a further postponement of six months to present additional information. Analysing the information submitted by Brazil, the Commission concluded that it did not demonstrate "the adoption of concrete and sufficient measures, nor a clear commitment to meeting the recommendations". As such, "it declared the procedure set forth under articles 48 to 50 of the Convention to have been unmet and decided to submit the case to the Court's jurisdiction"' (IHR Court, 2010).

²⁶¹ MD (Brasil), 'Portaria N° 567/MD, de 29 de abril de 2009', *Diário Oficial da União*, n° 81, *Seção 1*, 13 (30 April 2009) <http://normas.gov.br/materia/-/asset_publisher/NebW5rLVWvcj/content/id/43331104> accessed 10 July 2019 (twice translated: PT>ES>EN).

In 2011, after the Inter-American Court of Human Rights (IHR Court) ruling against Brazil in *Júlia Gomes Lund et al. ('Guerrilha do Araguaia') Vs. Brasil*, Inter-Ministerial *Portaria* No 1 of 5 May 2011 would be published, under the Rousseff administration. With this act, the government gave the name 'Araguaia Work Group' (GTA) to a group consisting of the Ministries of Defence, Justice and Human Rights, as well as the AGU, CEMDP, other organizations belonging to the State, and the Communist Party of Brazil (PCdoB) - the latter included members of the Araguaia guerrilla group.²⁶²

The publication of Inter-Ministerial *Portaria* No 1,102 of 5 June 2012 would extend the term again, this time by two years. It also widened the GTA's membership, allowing the governments of the states through which the guerrilla group passed (Pará and Tocantins) and the Federal District to join. It also permitted the involvement of the Prosecutor General of the Republic, the Public Federal Ministry and, more relevant still, gave the option for families of the dead and disappeared (recognised as such in the final rulings of the cases heard before the Brasília Federal Justice and the IHR Court) to participate in GTA works.²⁶³

By the end of the Dilma Rousseff governments, two further ordinances would be issued by the Ministries, extending the deadline for the GTA's works and making general specifications on the work group's structure and the attributions of each member entity, among other points. Inter-Ministerial *Portarias* numbers 1,540 of 8 September 2014²⁶⁴ and 5 of 11 May 2016²⁶⁵ revoked previous administrative acts.²⁶⁶

²⁶² MD/MJ/SEDH (Brasil), 'Portaria Interministerial MD/MJ/SEDH N° 1 de, 05 de maio de 2011', *Diário Oficial da União* (6 May 2011) <www.normasbrasil.com.br/norma/portaria-interministerial-1-2011_228607.html> accessed 10 July 2019.

²⁶³ MJ/MD/SDHPR (Brasil), 'Portaria Interministerial MJ/MD/SDH-PR N° 1.102, de 05 de junho de 2012'. *Diário Oficial da União, Seção 2*, 52 (6 June 2012), <www.mctic.gov.br/mctic/abre/legislacao/portarias_interministeriais/migracao/Portaria_Interministerial_MJMDSHPR_n_1102_de_05062012.html> accessed 10 July 2019.

²⁶⁴ MJ/MD/SDHPR (Brasil), "Portaria Interministerial MJ/MD/SDHPR N° 1.540, de 08 de setembro de 2014", *Diário Oficial da União, nº 173, Seção 1*, 23 (9 September 2014) <www.lex.com.br/legis/25935832_PORTARIA_N_1540_DE_8_DE_SETEMBRO_DE_2014.aspx> accessed 10 July 2019.

²⁶⁵ MJ/MD/MMIRDH (Brasil), 'Portaria Interministerial MJ/MD/MMIRDH N° 5, de 11 de maio de 2016', *Diário Oficial da União, nº 90, Seção 1*, 71 (12 May 2016) <www.in.gov.br/materia/-/asset_publisher/Kujrw0TZC2Mb/content/id/22805453/doi-2016-05-12-portaria-interministerial-n-5-de-11-de-maio-de-2016-22805424> accessed 10 July 2019.

²⁶⁶ It was not possible to access Inter-Ministerial *Portaria* No 1,669 of 21 July 2011, as it was not available on the federal government's official webpages.

As mentioned earlier, the CEMDP put itself forward to continue the work of the GTA in mid-2015, in line with its obligation to search for the bodies of the dead and disappeared. The last regulation on the GTA's operations was Inter-Ministerial Ordinance No 14 of 8 August 2018, jointly published by the Ministries of Justice, Public Security, Defence and Human Rights, under the Temer government. This repeated several of the provisions under previous ordinances, such as the final term of 24 months to finish the works. This time, however, article 31 required the drawing up of a report between the GTA and the AGU 'on the viability of continuing the searches', to be presented in the main action before the Federal Justice of Brasília and before the IHR Court.

Nevertheless, the Araguaia Work Group and the Perus Work Group would both be eliminated under the Jair Bolsonaro administration, by means of Decree No 9,759 of 11 April 2019. The Decree shut down any boards and bodies connected to the federal public administration that involved the participation of civilians - including the aforementioned work groups. The CEMDP published a report on its actions in August 2019, after the unprecedented removal and replacement of four of its seven members. The report says, 'the bodies that made up the group began negotiations to recreate it, so that it might conclude its works',²⁶⁷ appealing even to the Office of the Chief of Staff on that premise, but to no avail. The GTA was therefore officially considered to have been dissolved as of 28 June 2019.

3.3.1.3. *Third National Programme for Human Rights (PNDH-3)*

The PNDH-3 was launched in 2009. It took the form of a Presidential Decree (No 7,037 of 21 December 2009, implemented by Decree No 7,177 of 12 May 2010). As the most detailed PNDH of its time, the third version was structured into six guiding principles laid down in the appendix to the decree. Each was enforced with a related directive and strategic objectives. A figure within the State was made accountable for each action under the programme. While the fifth guiding principle of the PNDH-3 required a 'cultural education in human rights', the sixth - 'the Right to Memory and the Truth' - went further. It marked the first time a PNDH had laid down a federal public human rights agenda on the right to memory and truth.

²⁶⁷ CEMDP (Brasil), 'Relatório de Atividades N° 01/2019' (n 187) 11.

As with each of the other principles, the Right to Memory and the Truth included an introduction to the programme's directives, objectives and actions, drawing attention to how silence and extinction of memory in society concerning the practices of the 1964 regime had created 'serious gaps in the collective experience of building a national identity'. Specifically, the three directives that would guide the sixth principle were: 23) Recognition of memory and truth as the human right of citizens and a duty of the State; 24) Preservation of historic memory and a public construction of truth; and 25) Modernization of legislation relating to the promotion of the Right to Memory and the Truth, thus strengthening democracy.

The introduction to the content under this principle recognises that discussion in society around this issue is scarce. It presents data on repression under the regime:

The systematic human rights violations at the hands of the State during the dictatorial regime are recognised by the majority of the population, particularly by young people. The in-depth analysis of those affected by political repression is still far from conclusive; however, estimates suggest that at least 50,000 people were captured in just the first few months of 1964; around 20,000 Brazilians were tortured and around 400,000 citizens died or disappeared. This led to there being thousands of unregistered political prisoners, 130 prohibitions, 4,862 removed from political roles, and an unknown number of exiles and political refugees.²⁶⁸

The first of the principle's three directives was centred around the creation of a truth commission, beginning with a bill drawn up by a work group of members from the federal government and civilian representatives appointed by the CEMDP. The 'National Truth Commission' would work in collaboration with the National Archive, the Amnesty Commission, the CEMDP, the Inter-Institutional Supervisory Commission Overseeing the GTA, and the GTA itself. The Commission's strategic objective would be to evaluate and publicly elucidate 'the human rights violations committed during the political repression that took place in Brazil during the period set under art 8 of the ADCT of the Constitution, with the aim of enabling the enjoyment of the right to memory and historic truth and of promoting national reconciliation'.

²⁶⁸ SEDH (Brasil), *Programa Nacional de Direitos Humanos (PNDH-3)* (Secretaria Especial de Direitos Humanos da Presidência da República, Brasília 2010) 173 (twice translated: PT>ES>EN).

As will be seen in the next sub chapter, the directive achieved its goals.

The second directive sought to encourage the creation and maintenance of memory centres, including local memorials commemorating human rights violations, as well as the creation of a ‘specific commission, in partnership with history departments and research centres to reconstruct the history of illegal repression under the New State (1937-45)’, which was the dictatorial period under the reign of Getúlio Vargas. The final directive of the principle was centred around revoking legislation that remained from the dictatorship and that contradicted assurances of human rights. For example, bills that went against human rights and the right to memory and the truth were revised. It was designed to encourage the avoidance of public tributes – in streets, ceremonies, and on public land – to persons identified as torturers, and to trace and monitor the processes for assigning civil accountability in trials for human rights violations, pursuant to art 8 of the ADCT.

Human rights organizations, such as the Family Members Commission, criticised the directive on creating a truth commission for removing the term ‘justice’ from the original bill for the Programme, which would have made it a ‘National Commission for Truth and Justice’, as requested before its creation.²⁶⁹ There were, also, plenty of discussions and disputes in the federal government about the content and effects of the PNDH-3 (these are addressed under point 4.2.1 of this thesis).

3.3.2. *Ministry of Human Rights*

The main memory initiative of the Ministry of Human Rights²⁷⁰ during the Lula da Silva and Rousseff administrations was the *Direito à Memória e à Verdade* (‘Right to Memory and the Truth’) Project. It centred around the idea of building a collective memory of the military

²⁶⁹ Rafael L Schincariol, ‘A Comissão da Verdade no Brasil’ (IV Seminario Internacional Políticas de la Memoria – “Ampliación del campo de los Derechos Humanos: Memorias y Perspectivas”, mesa 22, Buenos Aires 2011); João Batista Teófilo Silva, ‘A Comissão Nacional da Verdade e os desafios e limites para a “justiça de transição” no Brasil’ (2016) 12 *Revista Angelus Novus* 101; Fernanda Nalon Sanglard, ‘Justiça de Transição, Comissão da Verdade e as Especificidades do Caso Brasileiro’ in MPF (ed), *Justiça de transição, direito à memória e à verdade: boas práticas* (2018) 238.

²⁷⁰ From 1997 to 2015 it was called the Special Secretariat of Human Rights (SDH) of the Presidency of the Republic and then the Ministry of Women, Race Equality and Human Rights from 2015 to 2016. But ever since it was established it has been classified as a ‘Ministry’, which is why I chose to address it as an entity separate from the Presidency of the Republic.

dictatorship. According to the description on the Human Rights Secretariat webpage,²⁷¹ the project's aims were to 'recover forgotten memories of the resistance's struggles against the military dictatorship and, more specifically, the history of the men and women who suffered persecution, torture, exile, displacement, imprisonment, death, or forced disappearance for fighting the oppressive regime'.²⁷²

The project began in 2006, with the organization of a photography exhibition 'The Right to Memory and the Truth about the Dictatorship in Brazil 1964-1985', after the CEMDP recovered data and photographs from the database of the National Archive. The exhibition began in the Chamber of Deputies and went on to visit locations such as the Museum of the Resistance in São Paulo, as well as universities. It toured over 35 cities in Brazil, as well as the city of Buenos Aires, and according to estimates reached at least 1.5 million people.²⁷³

As part of the project, publications were also launched that aimed to recover the history and memory of the repressive era, or of certain individuals or groups affected by the military regime. Publications such as *História de Meninas e Meninos Marcados pela Ditadura* (2009), *Habeas Corpus: que se apresente o corpo* (2010), *Lutas pelo Feminino, Camponeses mortos e desaparecidos: excluídos da Justiça de Transição* (2013) were part of this collection. The photography exhibition *Ausências Brasil* was particularly effective.²⁷⁴ It was composed of family photographs, recreated without those who had died or disappeared at the hands of the military regime, making the empty space left behind into a symbol of their absence. The work was inspired by another about Argentine families, created by the same photographer: Gustavo Germano.²⁷⁵

²⁷¹ The webpage was still available upon the preliminary conclusion of this thesis (in July 2019) but was already out of date by then as it referenced the SDH, which had been dissolved in October 2015 following changes to the federal structure of human rights. That created the Ministry of Women, Race Equality and Human Rights which currently, in early 2020, has become the Ministry of Women, Families and Human Rights. However, as mentioned in a previous footnote (n 178), that page has been either temporarily or permanently taken down.

²⁷² CEMDP (Brasil), 'Sobre o Projeto - Projeto Direito à Memória e à Verdade' (n 180) (twice translated: PT>ES>EN).

²⁷³ Jornal da Paraíba (Redacción), 'UFPB sedia exposição fotográfica sobre a Ditadura Militar no Brasil', *Jornal da Paraíba* (21 April 2009) <www.jornaldaparaiba.com.br/cultura/ufpb-sedia-exposicao-fotografica-sobre-a-ditadura-militar-no-brasil.html> accessed 10 July 2019.

²⁷⁴ Photos from the exhibition are available at <www.gustavogermano.com/portfolio/ausencias-brasil-2012/> accessed 10 July 2019.

²⁷⁵ MDH (Brasil) (Redacción), 'Direito à memória e à verdade: Ministra abre exposição Ausências Brasil', *Ministério dos Direitos Humanos* (28 August 2013) <www.mdh.gov.br/sdh/noticias/2013/agosto/direito-a-memoria-e-a-verdade-ministra-abre-exposicao-ausencias-brasil> accessed 15 July 2019.

Another poignant initiative was the *Memorial Pessoas Imprescindíveis* ('Memorial of Indispensable Persons'). These were public monuments honouring victims of State terrorism, such as sportsman Stuart Edgar Angel Jones (in Rio de Janeiro)²⁷⁶ and Sergeant Manoel Raymundo Soares (in Porto Alegre),²⁷⁷ militants who were tortured and killed by the dictatorship.

3.4. NATIONAL TRUTH COMMISSION (CNV)

The formalization of the PNDH-3 in 2009 initiated the process that created the CNV in Brazil.²⁷⁸ In 2010, bill 7376/2010 was brought before the Chamber of Deputies. It was drawn up by the Executive and stipulated the creation of a CNV that would not be used for punitive purposes. In this way, Brazil became the penultimate country in the South Cone to have come out of a dictatorship (in the second half of the 20th century) and established a commission for truth about the recent past, almost 30 years after its democratic transition.²⁷⁹

The bill led to the passing of Law No 12,528 of 18 November 2011²⁸⁰ and established the CNV which was installed under the Office of the Chief of Staff. This Commission was composed of seven members appointed by the Presidency pursuant to the terms of the law that created it. Its objectives were to be published in a detailed final report in 2014²⁸¹ 'containing the actions taken, the events examined, conclusions and recommendations' for measures and public policies (article 11).

The law stipulated that the Commission's aim was to 'examine and shed light on the serious human rights violations committed during the period set forth under art 8 of the ADCT, in order to enable the enjoyment of the right to memory and historic truth and promote national

²⁷⁶ CRF (Redacción), 'Emoção em homenagem a Stuart Angel no Flamengo', *Clube de Regatas Flamengo (CRF)* (9 December 2010) <www.flamengo.com.br/noticias/flamengo/emocao-em-homenagem-a-stuart-angel-no-flamengo> accessed 13 July 2019.

²⁷⁷ PMPA (Redacción), 'Memorial Pessoas Imprescindíveis será inaugurado amanhã', *Prefeitura Municipal de Porto Alegre (PMPA)* (25 August 2011) <www2.portoalegre.rs.gov.br/portaal_pmpa_novo/default.php?p_noticia=144678&MEMORIAL+PESSOAS+IMPRESINDIVEIS+SERÁ+INAUGURADO+AMANHÃ> accessed 13 July 2019.

²⁷⁸ Point 4.2.1 of this thesis provides more detail on the controversies surrounding the PNDH-3's approval, the creation of the CNV, and the setting of the latter's objectives.

²⁷⁹ As mentioned in an earlier footnote, Bolivia created a new Truth Commission in 2017, in relation to the three dictatorships the country underwent between 1964 and 1982.

²⁸⁰ Brasil, 'Lei Nº 12.527, de 18 de novembro de 2011', *Diário Oficial da União* (18 November 2011) <www.planalto.gov.br/ccivil_03/ato2011-2014/2011/lei/l12527.htm> accessed 9 July 2019 (twice translated: PT>ES>EN).

²⁸¹ An amendment made by Law No 12,998 of 18 June 2014.

reconciliation' (article 1).²⁸² As such, CNV Resolution No 2 of 20 August 2012 was key to establishing the scope of the Commission's investigations: the aforementioned violations committed 'by public agents [or the] persons serving them, with the support or in the interest of the State'.

As Marlon Alberto Weichert points out, the CNV Law introduced four areas of activity for the Commission:²⁸³ a) investigations (the main aim of the CNV was investigations aimed at promoting the right to information and the truth - article 3, subsections I, II and III of the Law); b) humanitarian activities (locating and identifying bodies - article 3, subsection IV of the Law); c) integration activities (promoting justice and reparations, providing assistance to victims of violations - article 3, subsections V and VII of the Law); and d) forward-looking activities (promoting memory and non-recurrence - article 3, subsection VI of the Law).

The Commission was not free from internal controversy (in addition to the external controversies seen in more detail under point 4.2.2 of this thesis), such as disagreements over methodology that caused two members to leave. Moreover, the CNV did not take actions to encourage public debate, working largely in secret during its operational period. This led the president of the Republic at the time to question the absence of actions and testimonies that would affect public opinion.²⁸⁴ The largely professional make-up of the CNV - lawyers, a psychoanalyst, and a political scientist - also generated criticism. For example, the National History Association (ANPUH) criticised the lack of an historian within the CNV's ranks.²⁸⁵

The CNV made use of the new LAI - passed in conjunction with the CNV Law - in its work. The LAI prevented restrictions being placed on public access to information about human rights violations, and was the basis for using documentation that had been held by the National Archive since 2005.²⁸⁶ Moreover, the CNV's works took inspiration from the previous work of the CEMDP, and from the Amnesty Commission's processes. The three Commissions communicated with each other and with other public organizations throughout their works.²⁸⁷

²⁸² Brasil, 'Lei N° 12.527, de 18 de novembro de 2011' (n 280) (twice translated: PT>ES>EN).

²⁸³ Weichert (n 174) 125-32.

²⁸⁴ Marcelo D Torelly, 'Assessing a Late Truth Commission: Challenges and Achievements of the Brazilian National Truth Commission' (2018) 12(2) *International Journal of Transitional Justice* 105.

²⁸⁵ JBT Silva (n 269) 101.

²⁸⁶ CNV (Brasil), *Relatório da Comissão Nacional da Verdade*, vol 1 (Comissão Nacional da Verdade (CNV), Brasília 2014) 22.

²⁸⁷ *ibid* 26-27, 59-62.

Figure 2: Final recommendations from the National Truth Commission (CNV) of Brazil²⁸⁸

<p>Institutional Measures</p>	<p>1-The Armed Forces are to acknowledge their own institutional responsibility for the serious human rights violations committed during the military dictatorship (1964-1985); 2-The public agents who caused the serious human rights violations that occurred during the period investigated are to be declared legally responsible (under criminal, civil and administrative law) for those violations; 3-The public administration is to propose administrative and judicial actions to be taken against the public agents responsible for the acts that led to the State's condemnation for the practice of serious human rights violations; 4-Celebration of events commemorating the military coup of 1964 are to be banned; 5-Entry examinations and continuous assessment processes in the Armed Forces and in the area of public security are to be restructured, with the aim of improving knowledge of the tenets of democracy and human rights; 6-The curriculum for military and police academies is to be modified so that it promotes democracy and human rights; 7-The cause of death of those who died as a consequence of serious human rights violations is to be rectified; 8-Data held in the National System of the Integration of Justice and Public Security Information (Infoseg System) and, more generally, in public records are to be rectified; 9-Mechanisms to prevent and fight torture are to be created; 10-Institutes of legal medicine and agencies for criminal investigation, public security and civil police departments are to be decommissioned; 11-The public defender department is to be strengthened; 12-Dignity is to be introduced into and improved in the prison system and in the treatment of prisoners; 13-An external ombudsman is to be established for the prison system and related bodies; 14-Community Councils, which follow up on prisons, are to be strengthened; 15-Medical and psychosocial attention is to be permanently guaranteed for victims of serious human rights violations; 16-The values of democracy and human rights are to be promoted in education; 17-Support is to be given for the establishment and operation of an organism protecting and promoting human rights;</p>
<p>Initiatives for Regulatory Reforms</p>	<p>18-The National Security Law is to be repealed; 19-Brazilian legislation criminalising crimes against humanity and the crime of forced disappearances is to be strengthened; 20-The state police is to be demilitarised; 21-State Military Law is to be abolished; 22-Civilians are not to be subject to Federal Military Law; 23-Any discriminatory references to homosexuality are to be removed from legislation; 24-Legislation on criminal trials is to be modified so as to eliminate arrest warrants; 25-Custody hearings to be introduced, to prevent torture and false imprisonment;</p>
<p>Follow-up Measures</p>	<p>26-A permanent body is to be established, whose purpose is to follow up on the CNV's actions and recommendations; 27-Activities are to be continued that are aimed at locating, identifying and returning the bodies of politically disappeared persons to family members or otherwise appointed persons, so that they may receive a dignified burial; 28-Memories of serious human rights violations are to be preserved; 29-Policies are to be strengthened where they concern locating and granting access to archives from under the military dictatorship.</p>

²⁸⁸ Compiled by the author using data obtained from CNV (Brasil) (Redacción), 'Conheça as 29 recomendações da Comissão Nacional da Verdade', *Brasil* (10 December 2014) <www.brasil.gov.br/governo/2014/12/conheca-as-29-recomendacoes-da-comissao-nacional-da-verdade> accessed 11 July 2019.

On 10 December 2014, after two years and seven months of work, the Commission published its final report of over 3,000 pages divided into three volumes. It contained 29 recommendations for the Brazilian State on the issues of politics of memory, truth and justice (Transitional Justice), including 17 institutional measures, eight initiatives for regulation reformation, and four measures for following up on the CNV's actions and recommendations.²⁸⁹

The report's first volume was devoted to the regime's historic background.²⁹⁰ It described the actions of political repression and various types of violence that state entities carried out. The second volume included 'conceptual texts', documenting cases of human rights violations against specific social groups.²⁹¹ The third and final volume recapitulates the chain of command for each of the 434 deaths and disappearances identified for the period between 1964 and 1985 which was, ultimately, the period investigated with regard to the State's victims.²⁹² As a whole, the compilation of documents and multimedia put together by the CNV was catalogued and transferred to the National Archive.²⁹³

Nina Schneider describes the CNV as 'unique in history'²⁹⁴ due to the 27 years that passed between the transition to democracy and the Commission being set up, as well as for becoming the reference point for a national effort that involved around 80 local truth commissions in the states of the federations, or institutions (such as universities), including non-governmental ones.²⁹⁵ Schneider and Gisele Iecker de Almeida remind us that, unlike other similar commissions around the world, the CNV had to be approved by law, following intense negotiations

²⁸⁹ CNV (Brasil) (Redacción) (n 288).

²⁹⁰ Including the coup attempts from 1946 to 1964, the period of the regime itself and the post-dictatorship era up to the 1988 Constitution.

²⁹¹ This includes texts regarding human rights violations to diverse social groups (military, workers, peasants, Christian churches, indigenous peoples and universities), besides addressing the 'dictatorship and homosexualities', 'civilians who collaborated with the dictatorship', as well as 'civil society's resistance to human rights violations'.

²⁹² The specifics determined for the subjects of the CNV's investigation are studied in Chapter 4 under point 4.2.2.

²⁹³ Presidência (Brasil), *Mensagem ao Congresso Nacional, 2015* (Presidência da República, Brasília 2015) 206.

²⁹⁴ Nina Schneider, 'Introduction' in N Schneider (ed), *The Brazilian Truth Commission: Local, National and Global Perspectives* (Berghahn Books, New York 2019) 6.

²⁹⁵ A study of the local commissions requires an approach not covered under national and international perspectives but is perhaps for a new analytical perspective that looks specifically at local truth commissions (Schneider (n 294) 13).

that would guarantee the passing of the legislative bill.²⁹⁶ Torelly points out that the CNV broke away from the ‘power of informal military veto’ in Brazil, as its structure did not require military participation or influence.²⁹⁷ This split - although restricted to the CNV - was a break away from the Brazilian model of controlled transition.

In that sense, when viewed from the perspective of truth, as a pillar of autonomous transitional justice the Commission fulfilled its role, by consolidating its reports into a new state version of the recent past, which questioned the official versions (of the dictatorial State) up to that time, despite the refusal of military sectors to cooperate.²⁹⁸ However, this was not definitive. The Commission itself confirms this, recognising the need for continued investigations into the repression of, for example, peasants and indigenous peoples during the dictatorship.²⁹⁹ Moreover, victims had their expectations frustrated as there was no success in terms of locating bodies or of assigning criminal liability to state agents from under the dictatorship.³⁰⁰ Historian Carlos Fico believes that, in its analysis, the Commission left out ‘Brazilian communities who were not of the left or who did not participate in the armed resistance but were still victims of repression’, bring no new information on them to light as it focused on ‘very well-known landmark cases’.³⁰¹

Still, the CNV had an important memory component, which was responsible for making the progress of its works publicly known. In fact, moments such as the background for creating the Commission and internal discussions over what the subject of the CNV’s investigations would be were widely made public, attracting public attention to the debate around the civil-military dictatorship from various perspectives.³⁰²

²⁹⁶ Gisele Iecker Almeida & Nina Schneider, ‘The Brazilian National Truth Commission (2012–2014) as a State-Commissioned History Project’ in B Bevernage & N Wouters (eds), *The Palgrave Handbook of State-Sponsored History After 1945* (Palgrave Macmillan, Ghent 2018) 640.

²⁹⁷ Torelly, ‘Assessing a Late Truth Commission’ (n 284) 17 (back translation: ES>EN)

JBT Silva (n 269) 102.

²⁹⁹ In fact, the Commission acknowledged in its report a genocide of 8,000 unidentified indigenous peoples during the national security regime, an issue that affects the final number of people who died or disappeared under its reign (CNV (Brasil), *Relatório da Comissão Nacional da Verdade*, vol 3 (Comissão Nacional da Verdade (CNV), Brasília 2014) 25).

³⁰⁰ Torelly, ‘Assessing a Late Truth Commission’ (n 284) 20.

³⁰¹ Carlos Fico, ‘Sobre o relatório da Comissão da Verdade’, *Brasil Recente* (11 December 2014) <www.brasilrecente.com/2014/12/sobre-o-relatorio-da-comissao-da-verdade.html> accessed 11 July 2019 (twice translated: PT>ES>EN).

³⁰² From the recognition of state violence as a threat to human rights, for example, to a Brazilian version of the Argentine ‘theory of two demons, which is discussed in more detail in the next chapter.

One example is the work on exhuming the body of former President João Goulart (deposed in the 1964 coup) for an expert analysis into the allegations that his death had been at the hands of the regime and not due to natural causes.³⁰³

On the other hand, after publishing its final report, there were no great public discussions - nor repercussions - in terms of, for example, holding the agents accountable (criminally or symbolically) for the human rights violations that the report recognised them as having committed. The commission heard over 1,000 declarations from direct or indirect victims of the dictatorship - including that of the then-President of the Republic, Dilma Rousseff - and generated a vast amount of documentary and evidential material.³⁰⁴ But however wide the repercussions of the CNV report were in areas of academic studies into the human rights and civil organizations also involved in matters of memory, truth and justice, it doesn't seem that these initiatives reached the general population.³⁰⁵ Carlos Augusto Canêdo Gonçalves da Silva and Roberta Cerqueira Reis adopt a similar position:

The Truth and Transitional Justice Commissions adopted a central position in the judicial-political debate. The extension of their role in the political and social rebuilding of States had been the subject of many written pieces in that area. In Brazil, however, the debate seemed to have disappeared after the National Truth Commission published its final report at the end of 2014. Given its historic importance, this resulted in it having little impact on the media and among the general population.³⁰⁶

With regard to the absence of progress in the field of accountability/justice in Brazil, it is worth pointing out that, just like the CNV, Chile's National Truth and Reconciliation Commission, for example, had the legal objective of 'national reconciliation' which Funes indicates is a sign of the 'prevailing political mood, and neutralises the relationship between "truth" and "justice", just as the dictatorship's self-amnesty

³⁰³ CNV (Brasil) (Redacción), 'Entenda como será feita a exumação de João Goulart', *Comissão Nacional da Verdade (CNV)* (11 November 2013) <<http://cnv.memoriasreveladas.gov.br/index.php/outros-destaques/376-entenda-como-sera-exumacao-do-ex-presidente-joao-goulart>> accessed 10 July 2019.

³⁰⁴ Carlos Augusto Canêdo Gonçalves da Silva & Roberta Cerqueira Reis, 'Comissões da Verdade, memória, reconstrução e caso brasileiro' in EP Meyer (ed), *Justiça de transição em perspectiva transnacional* (Centro de Estudos sobre Justiça de Transição da UFMG/Secretaria da Rede Latino Americana de Justiça de Transição/Inítia Via, Belo Horizonte 2017) 60.

³⁰⁵ *ibid* 60-61.

³⁰⁶ *ibid* 44 (twice translated: PT>ES>EN).

law (1978) inhibited judicial agencies during the era when repression was at its greatest'.³⁰⁷ The idea of reconciliation as a means, present in democratic transition and throughout the Transitional Justice process in Brazil, although at the same time criticized by individuals and entities defending human rights - seeking the 'consolidation of democracy' as one of the CNV's end goals³⁰⁸ - can also be perceived as a repercussion of the work of the CNV. The Commission may have been dedicated exclusively to investigating crimes committed under State terrorism, but it did not have the tools to become a 'National Commission of Truth and Justice' as demanded by human rights entities prior to its creation.

In Brazil, the vast amount of time that passed between the end of the dictatorship and the creation of the CNV was surely one of the reasons for its lack of reach. Democracy in Argentina, for example, was bolstered by a tradition of human rights³⁰⁹ under the work of CONADEP (despite it being the target of the criticism that it stirred up the theory of two demons - matter addressed at the point 4.2.2); in Brazil, instead, a vast amount of time lapsed from the dictatorship and democratic transition before the establishment of a truth commission. This allowed for a dearth of narratives and a subsequent conviviality of silence and conflicting memories, as well as a predominance of memories of politics incorporated into the federal government's policies on memory, for example. Further, with the STF deciding not to reinterpret the Amnesty Law in 2010, with the pendency of the ruling of the ADPF No 320 on the same matter, and, further still, in the midst of the growing political and economic crisis between 2013 and 2016, the CNV's work was flooded by other proposals in the country's human rights agenda and it withered.

While the Commission's actions perhaps brought about the Armed Forces' most significant step towards acknowledging (tacitly) the deaths and disappearances during the dictatorship, it was the target of attacks from members of those same Forces. In a 2014 exchange of *oficios* (administrative messages) between the Defence Minister and the Armed Forces' commanding officers, to provide information the

³⁰⁷ Patricia Funes, 'Nunca Más: memorias de las dictaduras en América Latina. Acerca de las Comisiones de Verdad en el Cono Sur' in B Groppo & P Flier (eds), *La Imposibilidad del Olvido* (Al Margen, La Plata 2001) 49 (translation: ES>EN).

³⁰⁸ Schincariol (n 269).

³⁰⁹ Jelin, cited in Schneider (n 294) 12.

Truth Commission had requested, the head of the Navy declared that ‘(no) indication or evidence, material or documentary, had been found that allowed for the confirmation or denial of information’ about past violations.³¹⁰ Similarly, as addressed in Chapter 4 (specifically, under point 4.3), the very existence of the CNV generated greater reactions from sectors opposed to the politics of memory introduced since the redemocratization, creating a clash of narratives.

³¹⁰ Mateus Henrique Pereira, ‘Nova direita? Guerra de memória em tempos de Comissão da Verdade (2012-2014)’ (September/December 2015) 31(57) *Varia História* (Belo Horizonte) 876.

4.

POLITICS OF MEMORY: PRESIDENTIAL SPEECHES,
INTERNAL DEBATES AND THE 'MEMORY OF THE VICTORS'

Although the main periods during which the Fernando Henrique Cardoso, Luiz Inácio Lula da Silva and Dilma Rousseff governments were implementing their politics of memory were characterised by the gradual development of debates about memory - a line of discussion in which the overarching view of the events of the dictatorship regarded them as negative - there was still disagreement within the internal ranks of the federal government. This can be seen above all when looking at the speeches from the government's leadership. Public policies on Transitional Justice in Brazil were structured around recovering memory, (re)constructing the truth and, above all, providing reparations to indirect and direct victims (respectively, family members, and those who were killed and/or disappeared). Yet little was achieved in terms of institutional reforms and nothing in terms of accountability, two pillars relevant to recovering historic memory and shaping collective memory.

Even within the Lula da Silva and Rousseff administrations, which were defined by their execution of policies on memory, we can find conflicts and disputes around the recent past.³¹¹ Whether coming from the presidency, from the ministries, or from other State institutions subordinate to the federal government, concrete motivations and limitations arose that influenced the government's enactment of politics of memory.

It is for those reasons that this chapter focuses firstly on analysing official presidential speeches. Given the vast range of speeches available in the Presidency of the Republic's online library, I opted to analyse

³¹¹ Elizabeth Jelin, *La lucha por el pasado: cómo construimos la memoria social* (Siglo XXI, Buenos Aires 2017) 41 (translation: ES>EN).

general speeches (for example, inauguration speeches, and those announcing the opening of the Legislature and reforms to ministries), as well as those setting out or mentioning issues or actions concerning human rights, memory, truth and justice, Transitional Justice, or even those at Armed Forces ceremonies that mention topics that refer back to memories of the recent past.³¹²

Secondly, there is a brief look back on and analysis of three debates around politics of memory within the federal government's ranks, primarily by means of analysing journalistic sources to try to identify the events mentioned and the consequences thereof, in the form of policies on memory that more or less succeeded in their originally proposed intentions. Finally, there is analysis of the extent to which the federal government's policies on memory helped the 'memory of the vanquished' of the 1964 coup triumph over the ever-present 'memory of the victors', with the latter a means of putting pressure on the Brazilian State's initiatives for memory, truth and justice. It looks at this in light of the policies addressed in Chapter 3 and the peculiarities of speeches and controversies discussed in this chapter.

4.1. PRESIDENTIAL SPEECHES

4.1.1. *Lula da Silva and national unity*

Luiz Inácio Lula da Silva took office as the President of the Federative Republic of Brazil on 1 January 2003. During his first term, the central tenet of his human rights agenda was fighting hunger and extreme poverty in the country. Public policies that sought to meet the population's economic, social and cultural rights serve as a reflection of that.³¹³

³¹² To better fit to that end, the speeches pulled from the Presidency of the Republic's online library are listed in the bibliography as one source for Lula da Silva and one for Dilma Rousseff, allowing every speech to be cited as a single source, referring just to the date and event of each speech.

³¹³ On the social policies of the Lula da Silva government: Clóvis Roberto Zimmermann, 'Os programas sociais sob a ótica dos direitos humanos: o caso do Bolsa Família do governo Lula no Brasil' (2006) 3(4) Sur - Revista Internacional de Direitos Humanos 144 <<https://dx.doi.org/10.1590/S1806-64452006000100009>>; Rosa Maria Marques & Áquilas Mendes, 'Servindo a dois senhores: as políticas sociais no governo Lula' (2007) 10(1) Revista Katálysis 15 <<https://doi.org/10.1590/S1414-49802007000100003>>.

Upon his inauguration, in his first official speech as President of the Republic before National Congress, his outlook around ideas of national unity, change, development and growth was optimistic, with a tone that spoke of 'hope defeating fear'. This can be seen in more than one passage of the speech:

We find ourselves in a moment that is particularly favourable for [national development]. A rare time in the life of a people. A time in which the President of the Republic has the will of the nation at his side. Businesspeople, political parties, the Armed Forces and workers are all united. Men, women, the elderly, the young, they are all united under a single goal of making a contribution that will allow the country to fulfil its historic destiny - one of prosperity and justice.³¹⁴

By asserting that 'businesspeople, political parties, the Armed Forces and workers' were all united, Lula indicated four actors who should work together towards the development that the recently elected government's project was proposing. There was no space for dissent that would endanger the 'historic destiny - one of prosperity and justice'.³¹⁵

In that vein, in a speech after the formal sitting in Congress, Lula da Silva issued a declaration to the nation (from the '*Parlatorio*' of the Planalto Palace) in which he spoke of 'recovering the Brazilian public's dignity, recovering its self-esteem and spending every cent we need to spend to improve the living conditions of women, men and children who rely on the Brazilian State'.³¹⁶ On the other hand, he briefly noted that his electoral win was not built purely on a campaign, and pointed to the role of civil society in restoring democracy after the dictatorship: 'Before me, comrades - men and women - fought. Before the PT, comrades - men and women - died in this country, fighting for democracy and freedom'. And he announced that the day after his inauguration, he would be 'beginning the first campaign against hunger in the country'.³¹⁷

Schmidt recalls that on the occasion marking 40 years since the coup, Lula declared that 'we must look upon 1964 as a closed episode of history. The Brazilian public was able to overcome authoritarianism and

³¹⁴ Presidência (Brasil), 'Luiz Inácio Lula da Silva – Discursos Presidenciais' (Biblioteca da Presidência da República 2003-2010) www.biblioteca.presidencia.gov.br/presidencia/presidencia/ex-presidentes/presidencia/ex-presidentes/luiz-inacio-lula-da-silva.

³¹⁵ *ibid.*

³¹⁶ *ibid.*

³¹⁷ *ibid.*

re-establish democracy. It is now down to the historians to set straight the memory of what happened'.³¹⁸ Schmidt expresses doubts over the idea that can be inferred from Lula da Silva's speech, that of this vague notion that a 'Brazilian public bearing deep democratic beliefs' eventually defeated the military dictatorship (an entirely distant event). He also questions³¹⁹ the description of this as a 'closed' episode, and assigning historians the task of 'setting straight the "truth of the events" which paralyses them in the past, far from today's political debates'.³²⁰

In his opening address at the IX National Human Rights Conference on 29 June 2004, Lula mentioned new activities within the SDH/PR, in the form of a network of actions with a variety of aims, including 'compensating the families of the dead or of victims of political disappearance'. The President also placed more emphasis on remembering the 1964 regime:

The humanization of a society is not something that occurs naturally over time, nor is it a result of progress. That's also because economic efficiency is not necessarily synonymous with respecting human rights. In Brazil we have already had the hostile and distressing experience, during the dictatorial era, of certain good economic results accompanied by political suffocation. We will never forget that lesson.³²¹

He struck a similar tone - linked to the contradiction between economic success and authoritarianism - in his opening remarks at the Conference for International Democracy in Latin America on 2 December 2004, where he provided more depth:

For 25 years, only three countries on this continent have taken advantage of the revitalising breeze of democracy. In the rest, the suffocation of liberties and suppression of human rights have often been traded as hard currency, indispensable for greasing the economic cogs. A dreadful lie. We have learned first-hand that suppressing democracy also blinds the market forces and leads to unshared wealth, the oppression of the poor

³¹⁸ Benito Bisso Schmidt, 'Cicatriz aberta ou página virada? Lembrar e esquecer o golpe de 1964 quarenta anos depois' (2007) 14(26) *Anos 90* (UFRGS, Porto Alegre) 141.

³¹⁹ *ibid* 142.

³²⁰ José Viegas, Defence Minister of the time, did the same, when the Army released an official note, reaffirming that institution's historic position that 'there are no historic documents proving [the deaths], as the operational records and intelligence activities of the era were destroyed pursuant to a legal determination'. Viegas asserted he had 'no motivation to return to these historic cases. They belong to history and should be looked at by historians'. The Minister was eventually dismissed (*ibid* 144-45 (twice translated: PT>ES>EN)).

³²¹ Presidência (Brasil), 'Luiz Inácio Lula da Silva - Discursos Presidenciais' (n 314).

and the persecution of the righteous. [...] Everyone here is concerned by the results of the latest UNDP survey, in which over half of Latin Americans said they would exchange democracy for an authoritarian regime that were able to resolve economic issues. I am convinced that it is not the democratic government they are rejecting. What the public will no longer stand for is the exodus of men, women, young people, the elderly and children, excluded from the land, from employment, from dignity, and from democracy.³²²

At the annual general officers' lunch on 15 December 2004, however, Lula da Silva preferred to highlight the positive economic indicators, the performance of programmes such as the *Bolsa Família*, and the importance of the Armed Forces to the country. He asserted that the success of development, economic growth, employment and wealth distribution in the country depended on everyone being united, from the population to the Armed Forces - national unity.³²³

On the other hand, on 21 December 2005, at the ceremony inaugurating the new Special Secretary for Human Rights, Paulo Vannuchi, Lula da Silva briefly recalled Vannuchi's role in putting together *Brasil: Nunca Mais*, the book/report 'on the period of authoritarianism through which Brazilians lived'. In 2006, Lula da Silva paid an official visit to the Tropicália Festival in the Barbican Centre in London where he also recalled his own clandestine opposition to the dictatorship, as well as that of members of his government:

The Tropicália movement coincided with a time in which political and cultural conflict were at their most acute in Brazil. It was an expression of resistance and non-conformity. A way to confront the mood of repression and intolerance that reigned in the country. Looking back, I can see that everyone resisted in their own way. I was taking my first steps in the union struggle. Many who today are members of my government put up a clandestine resistance. The Tropicalists questioned customs, rules, and artistic values.³²⁴

At the Inter-American Human Rights Congress on 31 August 2006, Lula asserted that one of the consequences of dictatorships 'is to lead people to believe that the issue of human rights is restricted to the fight for democratic freedoms' and that his government would therefore be

³²² Presidência (Brasil), 'Luiz Inácio Lula da Silva – Discursos Presidenciais' (n 314).

³²³ *ibid.*

³²⁴ *ibid.*

‘handl[ing] the matter of human rights in a much wider and more complete sense’, by ‘[fighting] hunger and destitution with structured public policies, which boost welfare standards and reduce social inequalities’.³²⁵ This shows Lula da Silva presupposed that the post-dictatorship human rights agenda would be restricted to the fight for democratic freedom and also that such a fight had less reach and was less extensive than policies addressing welfare and reducing social inequality.

Recalling, at the sword-presentation ceremony for cadets of the Military Academy of Agulhas Negras on 19 August, the actions of the Brazilian Expeditionary Force during the Second World War, Lula da Silva noted in one passage that he was sure that ‘nobody here would allow - in our beloved land - anything to happen that goes against what our expeditionaries fought for. I’m referring to authoritarianism, racism, intolerance, discrimination, anti-Semitism, and persecution on the basis of political or religious beliefs.’³²⁶

After his re-election, Lula da Silva made an announcement on national radio and television on 31 October 2006 to reassert that his second term would be defined by the word ‘development’, requesting, as such, ‘national effort and understanding’. In the inaugural address for his second term, on 1 January 2007, Lula da Silva again captured a tone that spoke of national unity, predicting ‘vigorous growth’ for Brazil in the years to follow.³²⁷

Only on 29 August 2007 - the day on which the final book/report of the CEMDP was published - did Lula give an official speech touching specifically upon the issue of the dictatorial era. He highlighted that there was no ‘revanchism’ in searching for the ‘bodies of many of the dead opposers’, as well as defending and ‘sowing the seeds’ of human rights. On the other hand, he suggested that a supposed search for ‘harmony’ and ‘reconciliation’ was the motivation behind the CEMDP’s work, mentioning the initiative to create a bank of DNA from the family members for identifying the disappeared:

I’d like to finish by suggesting that the launch of the book/report on the date that marks 28 years since the Amnesty Law’s publication is symbolic of the search for harmony, of the sentiment of reconciliation and of the humanitarian objectives that have driven the Special Commission’s 11 years of work. We have worked to definitively turn this dark page in our

³²⁵ Presidência (Brasil), ‘Luiz Inácio Lula da Silva – Discursos Presidenciais’ (n 314).

³²⁶ *ibid.*

³²⁷ *ibid.*

history and we believe that we will do that through state initiatives that become permanent, such as the bank of the DNA of family members seeking the bodies of their loved ones, as mentioned by our dear Pablo Vanucci [*sic*].³²⁸

At the celebration marking 100 years since the birth of Brazilian activist against hunger Josué de Castro, on 5 September 2008, Lula devoted the first few moments to criticising the concept of accountability for crimes against humanity. His argument was that it would be more effective to recover memories of the victims of the dictatorship, as a means of rejecting the authoritarian past:

As I said at the UNE, when we went to sign the document for the recovery of the UNE building: firstly, we often cry for our comrades who died in battle, in confrontation with authoritarian regimes... When we complain, taking issue only with those who committed the violence, we gratify those who committed the violence. True vengeance is to place greater importance on each victim than on those who killed them. We often do not remember the comrades who were persecuted throughout the political history of our country, because we are so concerned with criticising those who committed the controlling acts, that we forget to value the heroes who fought, who were imprisoned, exiled or killed for believing in a cause. They were the heroes; but often we forget them and curse the rest. Anyone wishing to curse, may curse; but we will honour our people.³²⁹

In a speech at the official end-of-year lunch with the general officers of the Armed Forces, on 8 December 2008 - during the peak of the ministerial discussions about whether to reinterpret the Amnesty Law (examined below, under point 4.2.1) - Lula highlighted progress in the economy and the role of the Armed Forces in recovery operations in the country and across the continent.³³⁰ No mention - at least in the official records - was made of the ministerial controversy. In his opening remarks at the 11th National Human Rights Conference on 15 December, the following week, Lula mentioned the debates around sexual and reproductive rights, and the issues of race and indigeneity, without touching on the matter of the recent past - despite the fact that the discussions at this Conference would form the basis for the PNDH-3.³³¹

³²⁸ Presidência (Brasil), 'Luiz Inácio Lula da Silva – Discursos Presidenciais' (n 314).

³²⁹ *ibid.*

³³⁰ *ibid.*

³³¹ *ibid.*

On 21 December 2009, at the ceremony for the launch of the PNDH-3 (the first PNDH to include the principle of ‘the Right to Memory and the Truth’), the President recalled the actions of some of the members of the ministerial team and of those who disappeared during the dictatorship, claiming: ‘We would suffer less if we transformed our comrades into heroes; not just persecuted people, but heroes’. At the presentation of the PNDH-3 edition published by the SDH/PR, the President pinpointed what he suggested were steps forward: the inclusion of guiding principle VI (the Right to Memory and the Truth) and the CNV initiative to investigate ‘that deplorable stage in our life as a Republic’:

With regard to the issue of the political deaths and disappearances during the dictatorial period, the PNDH-3 marks an important step towards creating a National Truth Commission whose task is to promote public elucidation of the human rights violations committed by state agents to repress opposers. Only with a full understanding of what happened during that deplorable stage in our life as a Republic will we build safe tools and a wide consensual compromise among all Brazilians for ensuring that those violations shall happen ‘never again’.³³²

Interviewed on 25 June 2010 for a documentary on Carlos Marighella, a militant killed by the State during the dictatorship, Lula criticised the characterisation of political dissidents under the dictatorship as terrorists. He said:

The concrete fact is that at a certain point in Brazil’s history, people who opposed the military regime in the 60s and 70s were sold to the public as bandits, labelled as terrorists and villains. As if they belonged to the axis of evil. That’s generally how it works, isn’t it? You show the people who oppose you as ugly, reactive, always out of line, not noble as I am here just now, and then you show the good side. It’s largely the same as what the US are doing with the Arabs, and what they did with the Russians, and what they did with China. In other words, everyone else was ugly and they were all noble. That’s what was done here in Brazil, too. So for a long time, it was put to society that the people who fought for freedom were terrorists, they were communists, they were goodness knows what else.³³³

³³² SEDH (Brasil), *Programa Nacional de Direitos Humanos (PNDH-3)* (Secretaria Especial de Direitos Humanos da Presidência da República, Brasília 2010) 13 (twice translated: PT>ES>EN).

³³³ Presidência (Brasil), ‘Luiz Inácio Lula da Silva – Entrevistas’ (n 314).

It is possible to detect a more or less consolidated opinion on the recent past and of politics of memory in Lula da Silva's speeches, with certain tropes occurring frequently: a slightly critical memory of the civil-military dictatorship, frequently recalling his own political actions as a unionist during the period and recognising the memories of the people alongside whom he fought in the past; lastly, he opposes the concepts of trials and accountability for the crimes committed by agents with links to the State. At the same time, at events with the Armed Forces Lula da Silva did not offer the slightest memory of the civil-military dictatorship; not even, for example, from the perspective of the Forces' role in protecting contemporary democracy.

4.1.2. *Dilma and the search for the truth*

Dilma Vana Rousseff's terms of office (the first in particular) were characterised by their continuation of the public policies set in motion under Lula da Silva. There were no differences when it came to memory, which paved the way for the creation of the CNV, planned under the PNDH-3 and approved with the submission of an Executive bill to National Congress. We could say that, compared to Lula,³³⁴ Rousseff³³⁵ devoted more attention to the authoritarian past in her public speeches.

In fact, in 2005 when Dilma Rousseff was still Chief of Staff and transferred the archives of oppressive entities to the National Archive of the Office of the Chief of Staff, she would declare that 'recovering the archives from the intelligence agencies and transferring them to the archiving agencies allows for the preservation of the country's memory and permits society to reflect on the values of democracy'.³³⁶

During her inauguration ceremony before National Congress on 1 January 2011, Rousseff devoted a special mention to her personal experience of the dictatorship. This was a means of protecting the position that personal freedoms occupied as one of her government's priorities:

³³⁴ Former political prisoner - for a month - as the dictatorship was being relaxed, for leading union strikes.

³³⁵ Previously politically persecuted person, imprisoned for three years and tortured for one month by the regime when repression was at its peak.

³³⁶ CEMDP (Brasil), *Direito à Memória e à Verdade: Comissão Especial sobre Mortos e Desaparecidos Políticos* (Secretaria Especial dos Direitos Humanos, Brasília 2007) 44 (twice translated: PT>ES>EN).

I reiterate my non-negotiable commitment to fully guaranteeing individual liberties: freedom of faith and religion, freedom of the press and of opinion. I reiterate what I said during the campaign: that I prefer the din of a free press to the silence of dictatorships. Anyone who, like me and like so many others in my generation, fought against control and censorship and dictatorship, have a natural love for the fullest democracy and the defence of unwavering human rights, in our Country and as a sacred flag flown for peoples all over the world.³³⁷

Her speech to the nation, after the speech to Congress, went further than to establish continuity with the previous government and reassert the 'spirit of union' in her assumption of power: she also reiterated, albeit more subtly, the maxim about fighting for freedom under the dictatorship. Rousseff denied feeling resentment or rancour about that period:

Today, I hold no resentment nor any form of rancour. My generation came into politics seeking freedom in a time of darkness and fear. We paid the price for our daring, helping - alongside others - the country to reach this point. To my comrades who fell on that path, I devote the sincerest homage and my eternal memory.³³⁸

As she presented her annual Presidential Message to Congress on the following 2 January, she recalled how the Republic was enjoying its longest period of democratic stability:

The democratic transition, the 1988 Constitution, and the free elections that followed strengthened and improved our institutions. The Brazilian public secured freedom and created a climate in which people actively participate in public policy creation and in setting the country's course.³³⁹

On 5 April 2011, at the ceremony for awarding Orders of Merit of Defence and the Armed Forces, Rousseff can be said to have given an interpretation of the role of the Armed Forces in a democratic constitutional state: she referred to the Armed Forces as being 'characterised by their strict compliance with their constitutional obligations', in 'a country that has set its own path straight'. Although

³³⁷ Presidência (Brasil), 'Dilma Vana Rousseff – Discursos Presidenciais' (Biblioteca da Presidência da República 2011-2016) <www.biblioteca.presidencia.gov.br/presidencia/presidencia/ex-presidentes/presidencia/ex-presidentes/dilma-rousseff>..

³³⁸ *ibid.*

³³⁹ *ibid.*

somewhat indirect and not made publicly, Rousseff's reference is particularly symbolic if one considers that she herself had been politically persecuted and tortured by a State that was, in the past, governed by the Armed Forces. Indeed, she asserted that this institution today 'fully shares the values of justice, democracy, peace and equal opportunities'.

A country that, like Brazil, has Armed Forces which are characterised by their strict compliance with their constitutional obligations is a country that has set its own path straight and reached a new level of institutional maturity. Our Armed Forces fully share the values of justice, democracy, peace and equal opportunities, in support of Brazil's internal and external objectives. In that way, they help consolidate our country as a leading example of a democratic constitutional state.³⁴⁰

The first official Rousseff speech to directly refer to what can be considered a policy of memory and truth was given that same year, on 19 November, when she passed the LAI and approved the creation of the CNV. In the presence of innumerable authorities, including representatives of the Armed Forces, among other points, Rousseff declared how important it was that the population - especially the younger generations who were born and have lived under a democratic regime - know the past, in order to exercise a citizenship which Brazil had found 'within itself, without revanchism, but without complying in silence' and that 'silence and oblivion are a huge threat' which can 'corrupt' the truth. She also stressed that, while other countries in Latin America had truth commissions 'in their own way and their own time', 'this is our time':

After undergoing dictatorial periods, various Latin American countries had their own truth commissions, with various names, with various methods of action. There have been examples in Chile, Argentina, Peru, South Africa. Each country acted in their own way and their own time, in line with their own circumstances and their own history. Brazil is acting now. This is our historic moment, this is our time. [...] But the truth matters, [...] especially to the young who today have the right to freedom and need to know that freedom is precious and that many people fought for it and died. The Brazilian generations are now all about the truth. [...] The victorious country of a victorious people which today has the privilege of living under a stable democracy. A stable democracy that was built by the many who fought, the many who resisted, the many who

³⁴⁰ Presidência (Brasil), 'Dilma Vana Rousseff – Discursos Presidenciais' (n 337).

sought to build democracy. The Law of Access to Public Information and the Law establishing the Truth Commission are the product of the effort and dedication of generations of Brazilians who fought and will continue to fight to make Brazil a better country, one that is more just and more equal; for the generations of Brazilians who died and who we honour today, not through vengeance but through a process of constructing truth and memory. A better country, one that is more just, more equal and, above all, more democratic.³⁴¹

As she presented the 2011 Human Rights Award on 9 December, Rousseff again defended freedom and democracy, mentioning a passage from her presidential speech, about her preferring the noise of a free press to the silence of dictatorships. ‘We are a country where disagreement is no longer synonymous with extremism. It’s possible to be different in this country. It’s possible for the press to be free, with its unique traits.’³⁴²

In the presence of the Armed Forces, at the formal presentation of the newly promoted General Officers and the annual networking lunch that followed on 19 December 2011, Rousseff officially addressed government matters concerning the economy and social programmes, taking care not to mention - according to the official records - ongoing politics of memory, especially the work of the CNV. The same would happen in the years to follow, at celebrations such as Brazilian Army Day, for example, and at each of the end-of-year lunches with the General Officers.³⁴³

The CNV was set up on 16 May 2012, with an emotional opening speech from President Rousseff, which again pointed to the background that led to the Commission’s establishment, also in the presence of Armed Forces representatives. She looked back on the first policies on memory in the 1990s: the release of the Rio de Janeiro and São Paulo DOPS archives under Collor, the establishment of the CEMDP under FHC, and the conceptualization and then the bill for the Truth Commission under Lula da Silva. Rousseff even mentioned José Sarney, as the President of the democratic transition. In addition to showing appreciation for the actions of those afflicted by state repression, she also valued the ‘national pacts and agreements’ that led to the end of the dictatorship:

³⁴¹ Presidência (Brasil), ‘Dilma Vana Rousseff – Discursos Presidenciais’ (n 337).

³⁴² *ibid.*

³⁴³ *ibid.*

In setting up the Truth Commission, we are not driven by revenge, hate, or the desire to rewrite history in a way that differs from what actually happened. We are driven by the imperative need for full knowledge of history, with no concealment, no camouflage, no vetoes, and no obstacles. [...] The country will no doubt recognise, within this group, the Brazilians who stood out on account of their democratic spirit and rejection of futile confrontations or vengeful actions. That is how we won back democracy, by fighting and through the irreparable sacrifices people made; but also through national pacts and agreements, many of which were transposed into the 1988 Constitution. Respecting and venerating those who bravely fought for democracy against the lawless State, and never ceasing to praise those combatants, is also a way of recognising and honouring the political pacts that led us to redemocratization.³⁴⁴

Rousseff also referred to setting up the CNV as a state policy on human rights, during the 2012 Human Rights Award ceremony on 17 December 2012, referring to it as a work aimed at ‘recovering part of our history’.³⁴⁵

On 21 June 2013, in the context of the national street protests that month, Rousseff made an official announcement by radio, television and internet, in which she said she was reflecting upon the importance of the manifestations for democracy. In that vein, she added: ‘My generation fought hard so that the voice of the streets would be heard. Many were persecuted, tortured and died for that’.³⁴⁶ Similarly, on 12 December, at the 2013 Human Rights Award ceremony, Rousseff said:

Respect for and the strengthening of human rights have been benchmarks for my government, guiding principles that we have kept to with commitment and ardour. It could not be any other way. The path of struggle and resistance against the dictatorship, the defensive path taken by all those who fought for democracy in our country, needs us to work to consolidate human rights, with an understanding of their global reach and interdependency. We have made a clear commitment to social inclusion, economic inclusion and a citizenship that includes all Brazilians, especially the poorest and most vulnerable.³⁴⁷

In 2014, President Rousseff gave another emotional speech at a CNV ceremony, this time in honour of the publication of the Commission’s

³⁴⁴ Presidência (Brasil), ‘Dilma Vana Rousseff – Discursos Presidenciais’ (n 337).

³⁴⁵ *ibid.*

³⁴⁶ *ibid.*

³⁴⁷ *ibid.*

final report on 10 December. Recapitulating her speech for the CNV's establishment in 2012, she emotionally stressed that 'the ones who deserve the truth are above all those who lost family, relatives, friends, comrades, and who continue to suffer... continue to suffer as if they had died again and do so every day'. She gave three objectives as the most important for the Commission: 'seeking factual truth, respecting historic memory and encouraging, in this way, the country to find reconciliation with itself, through information and knowledge'. In other words, reconciliation that can be achieved only by recovering memory and seeking the truth - and nothing less - as, while 'ignorance of a non-peaceful past instead contains hidden pain and bitterness', the 'truth doesn't mean revanchism' nor is it a 'motive for hate or settling scores'. Instead, it means 'freeing everyone from what remained to be said, explained, known, from what had lain hidden in the unknown locations where they left the bodies of many people' and an 'opportunity to get to know ourselves, our history, and our people and their history'. She also asserted that the government would study the report, taking the necessary measures to meet the Commission's recommendations. Further, she pointed out the legacy the CNV would leave for future generations:

The work of this Commission increases Brazil's chance of having a totally democratic future, free from the threat of authoritarianism. Actions such as this are indeed how we build democracy. The report being published today and the operations of state commissions form the starting block for improving the country. The search for historic truth is a way of building democracy and ensuring it is preserved. By creating this Commission, Brazil has shown that it is important to have knowledge of that period to prevent it from happening again. We owe it to the generations such as mine who suffered its terrible consequences. But, above all, we owe it to the majority of the Brazilian population who, born after the end of the last authoritarian regime, did not have full access to the historic truth. And the National Truth Commission provides an invaluable service of historic truth, especially for these generations and for future generations. Knowledge of the past is essential if we are to do a better job of reconstructing history. Starting from now, all Brazilians will have easy access - through the internet - to this Commission's report and to the relevant information, particularly about what happened during that period.³⁴⁸

³⁴⁸ Presidência (Brasil), 'Dilma Vana Rousseff – Discursos Presidenciais' (n 337).

Later on the same day, as she presented the 2014 Human Rights Award, Rousseff referred to the publication of the Truth Commission as a ‘forward step towards guaranteeing a right to all Brazilians: unrestricted knowledge of this history, so that we can always continue to build a better society’.³⁴⁹

Re-elected for her second and final term, Dilma Rousseff gave a speech on Constitutional Commitment to National Congress and to the nation on the day on which she was sworn in, 1 January 2015. In a brief speech to the nation, Rousseff highlighted the achievements of the previous government and objectives for the new one, but did not highlight the points about democracy and freedom addressed in her 2011 speech. However, in the speech in Congress immediately before it, the President was more specific, drawing an analogy between her political actions during the dictatorship and the daily hardship of a large part of the Brazilian population:

I also want to renew, before Congress, my commitment to the permanent and tenacious defence of the Constitution, the law, individual freedoms, democratic rights, the widest freedom of speech, and human rights. [...] I have been close to death many times and I emerged from those situations a better and stronger person. I was an opposer of a military regime that caused me pain and left me with scars, but I am not vengeful. But this process never destroyed my dream of living in a democratic country, and my will to fight and build an ever improving country. Saying that I am a survivor always stirs my emotions. I have also faced illness, but I can certainly tell you: I belong to a victorious generation. A generation that saw the possibility of democracy on the horizon and made it a reality. These two characteristics bring me closer to the Brazilian people - they, too, are survivors and victors, who will never give up on their dreams. Fight for them.³⁵⁰

After the impeachment process against Dilma Rousseff was authorised by National Congress, the President held two official meetings with groups who supported her, in which she adopted a stronger tone, addressing the process as an attempted coup d'état, recalling that that was how democracy was broken under the last dictatorship. On 22 March 2016, at a meeting with the Lawyers for Legality and in Defence of Democracy, the President said:

³⁴⁹ Presidência (Brasil), ‘Dilma Vana Rousseff – Discursos Presidenciais’ (n 337).

³⁵⁰ *ibid.*

You can call a coup d'état by many names, but it will always be what it is: a break from legitimacy, an attack on democracy. It doesn't matter whether the weapon of choice for the coup is a rifle, vengeance, or a few people's political desire to rise more quickly to power. This kind of synonymy, this kind of misuse of words, is the same that they used against us during the dictatorship, to say there hadn't been political prisoners, that there had been no political prisoners in Brazil, when people were living in chains that had been cast throughout the country. Denial of the truth doesn't surprise me, which is why there is only one name for it: a coup.³⁵¹

At a meeting with 'artists and intellectuals in defence of democracy' on 31 March, Rousseff marked the 52nd anniversary of the military coup, mentioning prisons, torture and censorship as well as the fight for democracy and highlighting that many of those who supported her impeachment had been persecuted and condemned by the dictatorship. On the other hand, Rousseff maintained that 'at every point in history, a coup takes on an appearance', arguing that across the 'processes that all Latin America experienced in the 1960s, 70s and 80s, the traditional form of coup was military intervention. Now, a coup is concealed. How? By supposedly democratic processes'.³⁵² She repeated her description of coups and mentions of democratic values on 12 May, in her last statement to the press as acting-President: 'I admit, I never thought it would be necessary to fight against a coup again in my country. Our young democracy, built out of struggle, made from sacrifice, built upon deaths, does not deserve this'.³⁵³

Dilma Rousseff was removed from her post that same day, 12 May 2016, after a vote in the Federal Senate to open the impeachment process against her. She was definitively removed from office on 31 August 2016. The Vice-President of the time, Michel Temer, assumed the Presidency of the Republic. His government effected changes to the entire ministerial structure, as well as a slow and gradual break away from the politics of memory the federal government had been promoting until then.³⁵⁴

³⁵¹ Presidência (Brasil), 'Dilma Vana Rousseff – Discursos Presidenciais' (n 337).

³⁵² *ibid.*

³⁵³ *ibid.*

³⁵⁴ According to the articles at: <<https://oglobo.globo.com/brasil/reparacoes-anistiados-travam-no-governo-temer-1-22721643>> (slow down in assessing political amnesty requests) and <www.gazetadopovo.com.br/politica/republica/governo-temer-suspende-pedido-de-desculpas-as-vitimas-da-ditadura-13klbj0ugdir0ni19mc8dbi0w/> (cancellation of the Amnesty Caravans project) (accessed 14 July 2019).

Looking at all of Rousseff's speeches between 2011 and 2016, one can see that, as with Lula da Silva, mentions of issues relating to the recent past were at the forefront of speeches delivered in the spheres of human rights and culture (such as at the Human Rights Awards and CNV ceremonies), but were absent from speeches at official events with Armed Forces representatives present. However, unlike her predecessor, Rousseff also highlighted the debates around authoritarianism, democracy, and civil and political liberties in her general speeches (for example, speeches to the nation and inaugural addresses). Similarly, when she went through the impeachment process against her, she adopted a bolder approach than her predecessor, who did not face the same process, describing her impeachment as a break from democracy and comparing it to the 1964 coup.

4.2. INTERNAL DISAGREEMENTS

The presidential speeches show the official position of the Executive's top representatives on analysing or promoting a certain state matter or policy. But there are aspects of these issues or policies that escape the speeches. It is impossible to fully recreate the content of internal debates that arose during the process of drawing up the policies on memory addressed in this thesis and there is a lack of exhaustive primary sources on the matter (including ministerial speeches about the policies). As such, this thesis looks at interviews and various journalistic sources that give an account of the disagreements over politics of memory.

The following cases have been chosen: the reinterpretation of the Amnesty Law, the publication of the PNDH-3 and the establishment of the CNV. Between 2008 and 2012, these became the central foci of internal debate within the federal government, with regard to politics of memory, highlighting the disputes over memory still present in the State and, in part, in society. On the one hand are the changes made to the PNDH-3 under Lula da Silva's government, as the STF blocked a reinterpretation of the Amnesty Law and the CNV's scope was set as being the search for the truth; on the other, is the 'theory of two demons' present in the debate around Brazil's transition to justice. It was rejected by most members of the CNV, but not free from controversy within and without the Commission.

4.2.1. *The Amnesty Law, the PNDH-3, and the impasse in Justice*

On 21 October 2008, the OAB brought an action before the STF after the public Amnesty Commission hearing, ‘the limits and opportunities involved in holding public agents legally accountable for crimes against humanity committed during extremist times’. In short, the subject of the so-called Allegation of Disobedience of Fundamental Precept (ADPF No 153) was the reinterpretation of Law No 6,683/1979 (the Amnesty Law), which refers to amnesty for common crimes committed by state agents.³⁵⁵

Weeks before the hearing, in May 2008, and on the grounds of the former UNE, Justice Minister Tarso Genro publicly supported the trial and sentencing of agents responsible for torture during the dictatorship. It was the most emphatic position adopted by the federal government on the issue up to that point: the Special Secretary of Human Rights, Paulo Vannuchi, had only touched upon the issue of the Law being inapplicable to torture committed by agents, speaking neither of punishment nor of soldiers. Minister Genro argued that a change to the Amnesty Law would not be required for trials to go ahead, because torture was not a political crime in the same way that the crimes named in the Law were, and that this was not an issue of ‘political revanchism’ or an attack on the Armed Forces.³⁵⁶

In response, traditional military institute *Clube Militar* suggested there were ‘people in ministry positions who had done the same: tortured, but for the other side. They stole, raided banks’ and ‘the Amnesty Law sought to erase that from history. In Brazil, these cases [of torture] were few and local’.³⁵⁷ The *Clube* was in favour of opening up

³⁵⁵ As mentioned in point 2.1: ‘The final text [of the Amnesty Law] amnestied political and electoral crimes, and other related crimes, but did not cover anyone sentenced for so-called “violent crimes” (“terrorism, kidnapping, robbery and attacks on individuals”). Given that no state agent who had contributed to political persecution, torture or murder was ever condemned for their actions, the most serious of these crimes were only ever classified in law as “political crimes” or “connected [crimes]”; as such, they were automatically amnestied. That is to say, in practice, not only was the Law not “wide, general and unrestricted”, as the sectors of society demanding amnesty had hoped for, but it consisted of “self-amnesty” for the regime.’ In short, the OAB’s demand consisted of requesting a STF interpretation in accordance with the Constitution, asking it to be recognised that common crimes committed by state agents during the dictatorship should not be covered under the bracket of political crimes (or connected) that the Law amnestied.

³⁵⁶ Ricardo Galhardo & Jorge Bastos, “A própria ditadura nunca defendeu a tortura”, diz Tarso’, *Extra* (17 May 2008) <<https://extra.globo.com/noticias/brasil/a-propria-ditadura-nunca-defendeu-tortura-diz-tarso-512565.htm>> accessed 15 July 2019.

³⁵⁷ Folha de S. Paulo (Redacción), ‘Anistia não protege torturador, diz Tarso’, *Folha de S. Paulo* (16 May 2008) <www1.folha.uol.com.br/fsp/brasil/fc1605200812.htm> accessed 15 July 2019.

the secret archives from the dictatorship (a stance contrary to that of the Army's upper echelons prior to that), as it would expose alleged crimes committed by members of the Lula da Silva government during the military regime, who would consequently have to be trialled following a reinterpretation of Amnesty Law.

In any case, the consolidated stances of the Ministry of Justice, its Amnesty Commission, and the OAB were that amnesty could not address actions taken on the margins of the dictatorship's authoritarian order in the same way as acts of torture or murder. International human rights law considers such actions imprescriptible. On the other hand, the Minister of Defence and head of the Armed Forces, Nelson Jobim, defended the law as having brought 'conciliation and peace' claiming that it therefore did not require revision.³⁵⁸ The AGU and the Ministry of Foreign Affairs (Itamaraty) also argued that it was an essential pact for democratic transition in the country, that could not be revised without the risk of creating democratic instability.

Faced with the onslaught, the Justice Minister officially announced that the position of the Presidency of the Republic was that it would not discuss the matter of the Executive revising or reinterpreting the Amnesty Law.³⁵⁹

The President has piloted and consolidated the position that we have been defending this week, that any interpretation of the Amnesty Law is an interpretation made by the Judiciary. The Executive shall not participate in this discussion. [...] No one, at any point, asked for the Amnesty Law to be revised. The government has its view of the importance of the role of the Armed Forces in a national project. From my perspective, the case is closed. On the government's part, no misunderstanding has arisen with the Armed Forces.³⁶⁰

On the other hand, when the AGU upheld its official legal opinion that the Amnesty Law also pardons the crime of torture, the Ministry

³⁵⁸ Lucas Ferraz, 'Governo abre debate sobre punição à tortura', *Folha de S. Paulo* (31 July 2008) <www1.folha.uol.com.br/fsp/brasil/fc3107200808.htm> accessed 15 July 2019.

³⁵⁹ Fernando Exman, 'Lula tira Executivo de debate sobre Lei da Anistia', *G1* (11 August 2008) <http://g1.globo.com/Noticias/Politica/0_MUL720120-5601-00-LULA+TIRA+EXECUTIVO+DE+DEBATE+SOBRE+LEI+DA+ANISTIATARSO+GENRO.html> accessed 15 July 2019.

³⁶⁰ Extra (Redacción), 'A pedido de Lula, Tarso reafirma que não pediu rever Lei da Anistia', *Extra* (12 August 2008) <<https://extra.globo.com/noticias/brasil/a-pedido-de-lula-tarso-reafirma-que-nao-pediu-rever-lei-da-anistia-557413.html>> accessed 15 July 2019.

of Justice and the SDH sought to point out possible changes in the AGU's legal position.³⁶¹ In that regard, the AGU confirmed it had no individual position, but rather an 'institutional position'. The CEMDP, in turn, declared that the 'Union, upon the invitation to align itself with the Public Ministry, preferred to take a stance that benefits torturers'.³⁶² The AGU would further reaffirm its position when the OAB brought an action before the STF for the reinterpretation of the Amnesty Law.³⁶³

The PNDH-3 was approved on 21 December 2009, generating another debate within the federal government over accountability for crimes committed by agents of the State. Just as various points under the Programme were criticised by the political opposition and by figures who opposed the federal government's human rights agenda, the Armed Forces commanders-in-chief (aeronautics, army and navy) disputed two specific directives under the Programme: directive 23, on establishing a truth commission that would evaluate human rights violations committed between 1946 and 1988 (the term set by article 8 of the Federal Constitution's ADCT); and directive 25, concerning criminal accountability in the 1964-1985 regime. As a result, as early as December 2009 Minister Jobim and the three Armed Forces commanders-in-chief had presented a joint letter of resignation, which President Lula da Silva rejected and then committed to revising the PNDH-3 decree.³⁶⁴

This was documented in the press, but denied by Justice Minister Tarso Genro, who declared that there had been 'no resignation nor any insurmountable disagreement' between the Defence Ministers and the Special Secretariat for Human Rights, neither was there 'any kind of uproar or concern. It is a normal debate that had already been ongoing

³⁶¹ Andréa Michael, Leticia Sander & Eduardo Scolese, 'Tarso volta a questionar AGU e cobra punição a torturador', *Folha de S. Paulo* (31 October 2008) <www1.folha.uol.com.br/fsp/brasil/fc3110200802.htm> accessed 15 July 2019.

³⁶² iG (Redacción), 'Vannuchi pede que AGU reveja parecer sobre Lei de Anistia', *iG* (7 November 2008) <<https://ultimosegundo.ig.com.br/brasil/vannuchi-pede-que-agu-reveja-parecer-sobre-lei-de-anistia/n1237648864863.html>> accessed 15 July 2019.

³⁶³ Diego Abreu, 'AGU envia parecer ao STF defendendo anistia a acusados de tortura', *G1* (2 February 2009) <http://g1.globo.com/Noticias/Politica/0_MUL983430-5601_00-AGU+ENVIA+PARECER+AO+STF+DEFENDENDO+ANISTIA+A+ACUSADOS+DE+TORURA.html> accessed 15 July 2019.

³⁶⁴ Evandro Éboli, 'Decreto que cria Programa Nacional de Direitos Humanos abre crise entre ministros', *O Globo* (29 December 2009) <<https://web.archive.org/web/20100101104319/http://oglobo.globo.com/pais/mat/2009/12/29/decreto-que-cria-programa-nacional-de-direitos-humanos-abre-crise-entre-ministros-915402153.asp>> accessed 15 July 2019.

and now the President will have the final word'.³⁶⁵ On the other hand, in the face of possible changes to the Programme, the Minister of Human Rights, Vannuchi, criticised the equal treatment of torturers and the tortured, and considered stepping down in the face of the Programme being turned 'into a political monstrosity unlike any other in the world, without UN or OAS backing'³⁶⁶.

One of the alleged discussions between the President and his aides - also documented by the press - would be the change to the strategic objective set forth in directive 23 of the Programme, which changed the point around human rights violations committed 'in the context of political repression' to 'in the context of political conflict'. This would involve investigating not just soldiers, but also militant individuals and groups who acted against the dictatorship.³⁶⁷ On the other hand, the human rights and political amnesty organizations called for changes to the purpose of a Truth and Justice Commission, 'with the power to assess the responsibility of state agents for human rights violations, and submit its conclusions to the relevant authorities'.³⁶⁸

Amidst the controversy, Lula da Silva told the press:

It is the Truth Commission that is causing controversy; in other words, in this country there is no reason anyone should fear the truth about Brazil's history being uncovered. And you can do this in the calm and peaceful way that we are doing it. This isn't a witch hunt: the intention is to unite the 140 people who still have not found their missing family members, and who have the right to find the body and bury it. [...] The important

³⁶⁵ G1 (Redacción), "“Não há controvérsia insanável” entre Jobim e Vannuchi, diz Tarso Genro", *G1* (30 December 2009) <<http://g1.globo.com/Noticias/Politica/0,,MUL1430198-5601.00-NAO+HA+CONTROVERSA+INSANAVEL+ENTRE+JOBIM+E+VANNUCHI+DIZ+TARSO+GENRO.html>> accessed 15 July 2019.

³⁶⁶ G1 (Redacción), 'Vannuchi ameaça deixar o governo se decreto for alterado, diz jornal', *G1* (10 January 2010) <<http://g1.globo.com/Noticias/Politica/0,,MUL1441222-5601.00-VANNUCHI+AMEACA+DEIXAR+O+GOVERNO+SE+DECRETO+FOR+ALTERADO+DIZ+JORNAL.html>> accessed 15 July 2019.

³⁶⁷ Gerson Camarotti, 'Para atender a militares, Lula manda alterar expressão no decreto da Comissão da Verdade', *O Globo* (12 January 2010) <<https://oglobo.globo.com/politica/para-atender-militares-lula-manda-alterar-expressao-no-decreto-da-comissao-da-verdade-3070469>> accessed 15 July 2019.

³⁶⁸ As seen in: Rafael L. Schincariol, 'A Comissão da Verdade no Brasil' (IV Seminario Internacional Políticas de la Memoria – "Ampliación del campo de los Derechos Humanos: Memorias y Perspectivas", mesa 22, Buenos Aires 2011) 11 (twice translated: PT>ES>EN). On the other hand, although in the end, the CNV's official name did not include the term 'Justice', this did not impede the commission from reconstructing the chain of command and accountability for the 434 deaths and disappearances identified in its final report, where one of its final recommendations was to attribute criminal and civil accountability to collaborators of the military regime.

thing is that people learn that when you put a discussion to society, you cannot then censor that discussion in society. In Brazil, some people are still afraid. They come up with a 1920s discourse, they come up with the discourse of the authoritarian regime. That is unacceptable. Nobody should fear democracy being exercised to its fullest extent. [...] Later, you can build public consensus - the middle ground - which is always what will prevail.³⁶⁹

In this context, in the lead up to February 2010, General Maynard Marques de Santa Rosa, head of the Army Personnel Department, launched criticisms at the future Truth Commission, calling it a 'slander commission' created by 'fanatics who had resorted to terrorism, kidnapping innocents and robbing banks as a means of fighting the regime, in order to gain power', and equated it to 'handing the hen house over to a fox'. The Defence Minister, with a recommendation from the Army commander-in-chief, Enzo Peri, asked the President of the Republic to remove the General from his role, for standing against the official position of the Ministry of Defence, which had been consolidated in negotiations with the government around setting up the truth commission.³⁷⁰

Possibly as a consequence of all these attacks, Decree No 7,177 of 12 May 2010 was introduced months later, amending various points of the PNDH-3. That same day, the Presidency of the Republic sent the bill for the establishment of the Truth Commission to Congress, leaving undefined whether the Commission's final scope would investigate the practices of just state agents under the dictatorship or also of dissident groups. The new PNDH-3 amended four passages under the Right to Memory and the Truth principle, as seen in the Figure 3, above:

³⁶⁹ O Estado de S. Paulo (Redacción), 'Comissão da Verdade não é 'caça às bruxas', diz Lula', *O Estado de S. Paulo* (15 January 2010) <<https://politica.estadao.com.br/noticias/geral/comissao-da-verdade-nao-e-caca-as-bruxas-diz-lula,496337>> accessed 15 July 2019.

³⁷⁰ G1 (Redacción), 'General que criticou programa de Direitos Humanos é exonerado', *G1* (10 February 2010) <<http://g1.globo.com/Noticias/Politica/0,,MUL1485711-5601,00-GERAL+QUE+CRITICOU+PROGRAMA+DE+DIREITOS+HUMANOS+E+EXONERADO.html>> accessed 15 July 2019.

Figure 3: Changes made to PNDH-3 directives after institutional disputes and verbal attacks on memory and truth policies:

Directive	Original Version	Amended Version
Directive 24.c	‘Identify and signal public places that served the dictatorial repression , as well as places where bodies and remains of political persecuted were hidden.’	‘Identify and make public the structures, places, institutions and circumstances related to the practice of human rights violations , their possible ramifications in the various state apparatus and in society, as well as promoting, based on access to information, means and resources necessary for the location and identification of bodies and remains the politically disappeared .’
Directive 24.f	‘Develop programs and educational actions, including the production of didactic-pedagogical material to be used by basic and higher education systems on the 1964-1985 regime and on popular resistance to repression .’	Develop programs and educational actions, including the production of didactic-pedagogical material to be used by the basic and higher education systems on the serious human rights violations that took place during the term defined in art 8 of the 1988 Act of Transitional Constitutional Provisions of the 1988 Constitution .’
Directive 25.c	‘Propose national legislation prohibiting the naming of public places and buildings after persons who committed crimes against humanity as well as requiring that such names already in applied are changed .’	‘Encourage debates and disseminate information so that public places and buildings are not named after persons recognised as torturers.’
Directive 25.d	‘Follow up and monitor the judicial processes for assigning civil and criminal [responsibility] in cases concerning events during the 1964-1985 regime .’	‘Follow up and monitor the judicial processes for assigning civil [responsibility] for cases involving serious human rights violations committed during the term defined under art 8 of the 1988 Act of Transitional Constitutional Provisions .’

Source: Compiled by the author.

Almost at the same time - on 29 April - the STF blocked, by seven votes to two, the request for a reinterpretation of the Amnesty Law according to the 1988 Federal Constitution. With regard to the possible reinterpretation, the President of the Supreme Court, Cezar Peluso, also against it, declared that ‘a society that wants to fight its enemies with their same weapons, with their same tools, with their same sentiments, is doomed to historic failure’.³⁷¹ The ruling of ADPF No 153 is not final (it has not had a *trânsito em julgado*), although the STF has not yet (2020) revisited it. Meanwhile, ADPF no 320, on the same issue, has not surpassed the technical-procedural steps, with no provisions having been made for a ruling on it.

There is a relevant subchapter in the plot of politics of memory in Brazil that is not found in presidential speeches nor in any of the policies on memory. In the face of internal political pressures - from the federal structure itself and, notably, the armed forces - the government opted for a non-confrontational stance, backing out of commitments it had made previously and as part of its human rights agenda. In the STF, during the vote against a reinterpretation of the Amnesty Law, the Law was frequently referred to as the result of a ‘political pact’ aimed at ‘national conciliation’ which could not be revised without the risk of generating political and institutional instability.

It can be understood that, by following the STF’s final decision (which was in turn based on the AGU’s observations, set out in a legal opinion with oral arguments), the federal government was implicitly admitting that it did not have the political capital to overcome controversy around classifying the military dictatorship as such, despite having a definitive position on the matter - as seen in the policies on memory studied and in the commentary on the presidential speeches. Fearing the inferno of a greater political crisis, over two decades after the end of the regime, the federal government settled for deciding to create a truth commission and leave it to that commission to define which practices it would investigate.

³⁷¹ STF (Brasil), *ADPF N° 153*, Arguição de Descumprimento de Preceito Fundamental N° 153, Supremo Tribunal Federal (STF) (Brasil) (29 April 2010).

4.2.2. *The National Truth Commission and the apex of the 'theory of two demons'*

The controversy set in motion by the ministerial attacks around reinterpreting the Amnesty Law and the PNDH-3 was followed by the approval of the National Truth Commission bill, now under the Dilma Rousseff administration. As seen in point 3.4, Resolution No 2 of 20 August 2012 resolved that controversy from a regulatory standpoint, ruling that the scope of the CNV's operations was 'the serious human rights violations committed during the period established in art 8 of the ADCT, by public agents [or the] persons serving them, with the support or in the interest of the State'. In fact, the resolution was passed in agreement with art 8 itself, which refers to people 'affected by acts of exception', which by necessity refers to state actions.

A significant external controversy arose in February 2012 when reserve soldiers and *Clube Militar* members issued a manifesto entitled *Eles que venham. Por aqui não passarão!* ('Let them come. They shall not get to us!'). It criticised the Commission, calling it an 'inconsequential act of overt revanchism and an affront to the law on Amnesty'.³⁷² It was signed by around 100 soldiers.³⁷³ On 6 March 2012, in a speech to the Federal Senate, the second Defence Minister under Dilma Rousseff, Celso Amorim, emphasised that the CNV Law had been agreed following negotiations and so there was no need for concern. He underlined his respect and appreciation for the Armed Forces' professionalism during times of emergency, but asked them to respect the law and civil authority.³⁷⁴ The federal government ruled that the soldiers who signed the letter should be punished for insubordination, which led to an increase in the number of signatures: among the signatories were general officers and former ministers of the Superior Military Court. It was one of the challenges that the CNV would come to face.

³⁷² Text available at: <www.forte.jor.br/2012/02/29/eles-que-venham-por-aqui-nao-passarao/> (accessed 6 July 2019). It was originally published in the blog *Verdade Sufocada* (The Suffocated Truth), run at the time by Maria Joseita Silva Brilhante Ustra. She was the wife of retired general Carlos Alberto Brilhante Ustra, who the São Paulo Court of Justice recognised as a dictatorship-era torturer.

³⁷³ Lígia Ferreira, 'Dilma manda punir 150 militares que criticaram o governo', *Folha Política* (3 March 2014) <www.folhapolitica.org/2014/03/dilma-manda-punir-150-militares-que-htm> accessed 15 July 2019.

³⁷⁴ MD (Brasil) (Redacción), 'Amorim afirma necessidade de respeito à lei e compromisso com modernização das Forças Armadas', *Ministério da Defesa* (06 March 2012) <www.defesa.gov.br/noticias/3914-06032012-defesa-amorim-afirma-necessidade-de-respeito-a-lei-e-compromisso-com-modernizacao-das-forcas-armadas> accessed 15 July 2019.

Still in 2011, the first Defence Minister under Dilma Rousseff, Nelson Jobim, was interviewed before the bill was approved. With regard to the scope of the Commission's investigations, he showed himself in favour of the CNV investigating the Armed Forces and guerrilla groups, as a way of gaining a supposedly 'fuller picture of the issue', compared to the 'unilateral' bill of the former Secretary for Human Rights, Paulo Vannuchi:

Look, the Truth Commission, the so-called Truth Commission, was created from a bill put before National Congress. Now it will depend on the voting in National Congress. This bill had the full support of the Defence Minister - myself. Initially, there was disagreement from the Secretary of the time, Vannuchi on the nature of the bill. The bill Vannuchi was proposing was unilateral - in other words, its intention was to analyse only one side of history. We want it to take a fuller picture of the issue - in other words, to look at the actions not only of the Armed Forces at the time but also of the guerrilla movements, in Araguaia, for example. Finally, the actions that were referred to as subversive at the time but were not. Well, the bill is with Congress. There is no disagreement from the current Secretary of Human Rights, Ms Maria do Rosário, as Minister Maria do Rosário knows the bill very well and we have an excellent relationship. I was even at the Minister's swearing in. So now we await the decision and the debate in National Congress, to prepare and establish this commission, so that, afterwards, we may carry on with its respective operations.³⁷⁵

In mid-May 2012, after the Commission was created and its members appointed but before the final Resolution on the CNV's operations was passed, members José Carlos Dias (former Justice Minister under the FHC government), and Gilson Dipp (Minister of the Superior Court of Justice and the Superior Electoral Court) took the same stance as Jobim. Dias spoke of 'clarifying everything we can clarify',³⁷⁶ while Dipp stated that 'the commission may examine every violation of human rights'. The rest

³⁷⁵ Upon the preliminary conclusion of this thesis in July 2019, the interview was available on the federal government's web portal. However, revising this thesis in April 2020, it became apparent that the link had been removed or disabled and it was not possible to access it through web archives either. In any case, the corresponding source is listed below: Brasil, 'Ministério da Defesa quer estimular desenvolvimento da aviação regional', *Brasil* <www.brasil.gov.br/noticias/seguranca-e-justica/2011/01/ministerio-da-defesa-quer-estimular-desenvolvimento-da-aviacao-regional> accessed 15 July 2019.

³⁷⁶ José Ernesto Credendio, 'Comissão da Verdade deve analisar os dois lados, diz integrante', *Folha de S. Paulo* (14 May 2012) <www1.folha.uol.com.br/fsp/poder/42768-comissao-da-verdade-deve-analisar-os-dois-lados-diz-integrante.shtml> accessed 15 July 2019.

of the Commission's seven members either did not publicly express their position, or only supported the investigation of state actions, as did Claudio Fonteles, former General Prosecutor of the Republic, for example.³⁷⁷

After the debates that led to the PNDH-3, civil human rights organizations argued that the CNV should investigate and assign responsibility for crimes committed by the State during the civil-military dictatorship.³⁷⁸ As seen above, under pressure from groups linked with or sympathetic towards the Armed Forces to include civilian guerrilla groups in the CNV's investigative scope, the Commission's bill put the initial proposals for the CNV on hold. While the CNV was being established, some media outlets and academic circles were beginning to discuss the 'theory of two demons', which had arisen in the debate around memory, truth and accountability in the country.

The 'theory of two demons' is a criticism of the school of thought in post-dictatorship Argentina, which placed crimes against humanity committed under the auspices of state terrorism side by side with any common or political crimes committed by armed groups.³⁷⁹ The key historical event to which this 'theory' is applied is to the declaration of Raúl Alfonsín (President 1983-1989), in an interview, that during the Argentine dictatorship 'one was fighting the demon with the demon's own weapons. And what happened was inevitable: Argentina became hell'.³⁸⁰ The basis of the 'theory' - not quite a theory in the traditional sense - centres around certain concepts: the idea that two opposing forces existed, the equal treatment of the two forces (violence committed by armed groups and state terrorism), an assumed link between action and reaction (started by guerrilla groups and continued by the State), and the *myth of exteriority of society* during the events in Argentina in the 1970s and early 1980s. In the words of José Pablo Feinmann, 'the creators of the expression "theory of two demons" were the ones who refuted it',³⁸¹ implying that the 'theory' was created as a form of ironic rejection, that over time gained its own

³⁷⁷ Priscilla Mendes & Nathalia Passarinho, 'Integrantes da Comissão da Verdade divergem sobre foco de investigações', *G1* (16 May 2012) <<http://g1.globo.com/politica/noticia/2012/05/integrantes-da-comissao-da-verdade-divergem-sobre-foco-de-investigacoes.html>> accessed 15 July 2019.

³⁷⁸ Schincariol (n 368).

³⁷⁹ Marina Franco, 'La "teoría de los dos demonios": un símbolo de la posdictadura en la Argentina' (2014) 11(2) *A Contracorriente* 22.

³⁸⁰ Clarín, cited in Franco (n 379) 27 (translation: ES>EN).

³⁸¹ José Pablo Feinmann, *López Rega, La Cara Oscura de Perón: apuntes sobre las Fuerzas Armadas, Ezeiza y la teoría de los dos demonios* (Legasa, Buenos Aires 1987) 87 (translation: ES>EN).

conceptualization - a 'theory of the theory of two demons' which seeks to explain the original thinking.³⁸²

At the turn of the 21st century, Argentina saw an increase in its state policies on memory and truth, as well as restarting the process of justice for crimes committed by state agents. This led to a resurgence in the debate around the dictatorship on the one hand, and the concept of 'complete memory' on the other, as a way of shedding light on memories supposedly omitted from the recent commemoration process in Argentina.³⁸³ Daniel Feierstein describes this new variant of the original idea as a 'recharged theory of two demons', as it carries new arguments and figures of speech such as 'a discourse that presents itself as obvious (a life is a life, a murder is a murder), depoliticised and free of ideology'.³⁸⁴ One of the main examples of this rhetoric is questioning whether the number of deaths and disappearances in Argentina was really 30,000. According to Feierstein this is a way of 'minimising the genocidal nature of one kind of persecution so as to equate it to other forms of use of violence (essentially, insurgent violence)'.³⁸⁵

In Brazil, although the discussion and concept of 'two equally violent and extremist sides' was not new in the public arena, for the first time since the end of the dictatorship, the situation - under the *Petista* governments - proved itself ripe for the implementation of truth-seeking measures, which had been frustrated by this idea of 'complete truth', or of equal responsibility.³⁸⁶ These tropes became more prominent as steps were taken to establish the CNV, even within the Commission itself.

³⁸² Emilio Crenzel, *La historia política del Nunca Más. La memoria de los desaparecidos en la Argentina* (Siglo XXI, Buenos Aires 2008) (translation: ES>EN).

³⁸³ Cristian Nicolás Palmisciano, 'Memorias y acción política de las organizaciones para la memoria completa: el caso del Centro de Estudios Legales sobre el Terrorismo y sus Víctimas' in JE Morales Ramírez et al., *Maestría en Derechos Humanos y Democratización en América Latina y el Caribe: tesis destacadas del año académico 2016-2017* (UNSAM Edita, San Martín 2018) 93-178.

³⁸⁴ Daniel Feierstein, *Los dos demonios (recargados)* (Marea, Buenos Aires 2018) 45 (translation: ES>EN).

³⁸⁵ *ibid* 71.

³⁸⁶ It is relevant, when discussing responsibility from a political science perspective, to understand this as an allusion 'to a relationship where one is subjected by another (or others) to a specific process or demand for accountability, as a result of the commitments or obligations one acquires upon taking up a cause (e.g. achieving certain objectives or goals, resulting from the application of remedies)' (Oscar Oszlak, '¿Responsabilización o responsabilidad?: el sujeto y el objeto de un estado responsable' (VIII Congreso Internacional del CLAD sobre la Reforma del Estado y de la Administración Pública, Panamá 2003) (translation: ES>EN)). That is to say, this is a process by which an agent assumes responsibility by accepting and performing their duties, which forces that agent to accept blame for their actions (this is different from accountability - a form of blame that the agent voluntarily accepts).

On the pillars of the classic ‘theory of two demons’, Renan Honório Quinalha argues that this would not even be debatable considering Brazil’s case:

Firstly, because no armed efforts were able to challenge the rule of law and its institutions in the pre-1964 period. It was the coup itself that forced armed clandestine action from left-wing groups, who were denied the option to act legally. Secondly, the organizations that adopted guerrilla tactics in opposition to the dictatorship did not systematically adopt terrorist actions - that is, actions against indiscriminate civilian targets. Thirdly, it is unreasonable to place acts of resistance towards a tyrannical government - carried out by independent groups - on level footing with the armed repression of the State and all its material power (Safatle, 2011). Finally, it is important to remember that the members of the urban and rural guerrillas who fought against the Brazilian dictatorship were for the most part imprisoned, tortured, and sometimes prosecuted and punished beyond what was legally permitted, contrary to the authoritarian law in force at the time.³⁸⁷

Considering that the term ‘theory of two demons’ was always used in criticism of holding the two sides in equal regard in the aforementioned way, in Brazil a ‘recharged theory’ or even a ‘theory of one devil’³⁸⁸ can be understood as the idea that under the Brazilian military regime there was only one ‘devil’ responsible for the anomie of the time: the communist threat supposedly embodied by João Goulart’s labour government³⁸⁹ and the guerrilla groups that formed after the coup, and

³⁸⁷ Renan Honório Quinalha, ‘Com quantos lados se faz uma verdade? Notas sobre a Comissão Nacional da Verdade e a “teoria dos dois demônios”’ in *Revista Jurídica* (Centro de Estudos Jurídicos da Presidência, Brasília 2013) 192 (twice translated: PT>ES>EN).

³⁸⁸ Feinmann (n 381) 89-90.

³⁸⁹ ‘Brazil, like the other Latin American countries, with the exception of Cuba, went to orbit around the US galaxy which was increasingly fearful that the Cuban Revolution would set an example for other Latin American countries who would then go over to the other side of the conflict. The heavy involvement of Lincoln Gordon - US ambassador to Brazil - and top-level US government in the turmoil and their support for the coup d’état was notable. However, Brazil was far from following in Cuba’s footsteps. The political groups that supported the implementation of an armed socialist regime in Brazil were too small and despondent to justify any real fear of a communist dictatorship. João Goulart, former Labour Minister under the Vargas administration in the early 1950s [and vice-president to the social-democrat Juscelino Kubitschek for the 1956-1961 period], was not a socialist and his actions were extremely consistent with the Brazilian Labour Party (his party) lines’ (José Carlos Moreira da Silva Filho, ‘Memória e reconciliação nacional: o impasse da anistia na inacabada transição democrática brasileira’ in P Abrão; LA Payne, & MD Torely, *A Anistia na Era da Responsabilização: O Brasil em Perspectiva Internacional e Comparada* (Ministério da Justiça-Comissão de Anistia/Oxford University-Latin American Centre, Brasília/Oxford 2011) 288 (twice translated: PT>ES>EN)).

all other opposers or persons considered a threat to the regime.³⁹⁰ As such, there was a view that favoured the official narratives of the regime, and considered any initiative aimed, for example, at truth-seeking to be revanchism - even if it sought a 'complete truth'.

This implies a rereading of the history of the authoritarian past in which it even ceases to be considered authoritarian, with consequences for the policies and debates around democracy and human rights. Although the civil-military regime may be considered a 'necessary evil' (in the traditional interpretation of the theory of two demons in Brazil), or even an actual 'dictatorship', these terms are insufficient to discount it as a government regime accepted and possible in society, frustrating the democratic debate.

The CNV overcame that rhetoric and way of thinking internally, a compromise that was reflected in its final report. However, the very existence of the CNV brought about an increase in the use of 'demonic' rhetoric, applied in criticism of the Commission. Set up 50 years after the coup, in 2014, the CNV generated a 'commemorative fever' about the dictatorship³⁹¹ which, as will be seen below, 'did not necessarily entail the kind of deep social reflection that would assist action able to definitively overcome authoritarianism and intolerance'.³⁹²

4.3. THE 'MEMORY OF THE VANQUISHED' VERSUS THE 'MEMORY OF THE VICTORS'

During the second FHC government, Jarbas Passarinho (who was a minister three times under the 1964 dictatorship) revealed a sentiment characteristic of the sectors who viewed the policies of granting reparations to victims of state terrorism and their families as 'revanchism'. He expressed his stance by arguing that the memory of those who died for the cause of national protection against internal and external threats had been damaged. In his ironic note, he wrote:

³⁹⁰ Jair Bolsonaro, 'Comissão da inverdade', *Folha de S. Paulo* (11 January 2011), <www1.folha.uol.com.br/fsp/opiniaao/fz1101201107.htm> accedido 15 July 2019.

³⁹¹ Marcos Napolitano, 'Recordar é vencer: as dinâmicas e vicissitudes da construção da memória sobre o regime militar brasileiro' (November 2015) 8(15) *Antíteses* (Universidade Estadual de Londrina, Londrina) 35.

³⁹² Patricia Funes, 'Nunca Más: memorias de las dictaduras en América Latina. Acerca de las Comisiones de Verdad en el Cono Sur' in B Groppo & P Flier (eds), *La Imposibilidad del Olvido* (Al Margen, La Plata 2001) 54 (translation: ES>EN).

In view of this, the victors apologise on behalf of the hundreds who died fighting for their country and whose families didn't merit compensation. In honour, too, of the memory of the cowardly killers; of those who fell during the terrorist attack on the Recife airport; the Second Army soldier acting sentry, whose body was torn apart by the explosives of terrorists who boast about this disgrace in a book that has won awards in Cuba; of the lieutenant of the prime minister in São Paulo, held hostage by Lamarca, his skull crushed; the Brazilian security forces for foreign ambassadors; private security guards; the German major, a student of the Army Staff College, struck down in Rio 'by mistake'. To take the words of Cecília Meireles, 'they are sweet deaths, free of the weight of tears', because the killers had no father, no mother, nor any children, because they were discarded by the Leninist revolution. Those who had their military careers interrupted or their academic titles withdrawn, due to unproven accusations of torture based on just one factious witness, also apologise; in the history rewritten by the vanquished, widely taught in schools, they are merely usurpers of power, driven by anti-communist paranoia.

Practically the living dead, they suffer the revanchism of those who - defeated by weapons - were the winners in a version fed by a government on the moderate left that destroys the facts. They all apologise to the communists who fought and won, partly because, as has been said for 300 years, in life there is no escaping the insults of time and the injustice of men.³⁹³

This citation from Passarinho, taken from an Oral History book published in 2003 by the Army Library publisher - which refers to the 1964 coup as a revolutionary movement and exalts it - helps provide an example of a rhetoric that is conscious of the demands of human rights entities, and of victim and family member organizations in terms of memory, truth, justice, and reparations, while at the same time, presenting itself as an alternative to the supposedly 'victorious' version of history, the one created by the 'vanquished' in the so-called 'revolutionary war' that afflicted Brazil in the 1960s. In fact, by substituting 'victors' for 'vanquished' in the quote above - and vice versa - it would be possible to obtain a speech that demands memory and reparations for the victims of the military regime, who would be apologising for having been persecuted by the State.

³⁹³ Jarbas Passarinho, 'A Desculpa dos Vencedores' in A Motta, *1964 – 31 de março: o movimento revolucionário e sua história* (Biblioteca do Exército, Rio de Janeiro 2003) (twice translated: PT>ES>EN).

The difference separating each of these versions however lies in the ‘additional social and historic sentiment which requires recognition of state terrorism as something *else*, something that breaks the binary’.³⁹⁴ In that sense, the debate around the ‘theory of two demons’ is relevant for identifying a form of discourse that dominated in post-dictatorship South American countries - one that, in the end, does not hold up - but also reaffirms political stances on the dictatorship without putting them into discussion.³⁹⁵

As mentioned in the previous point, Feinmann and Feierstein draw a distinction from the ‘theory of two demons’, the former calling it ‘one demon’, the latter a ‘recharged’ demon. This version does not necessarily reject the concept, but it does seek to minimise the seriousness of state acts of terrorism, by criticising the traditional positions adopted by the organizations for memory, truth and justice, and by showing that acts were either just as or more reproachable than those (according to this discourse) committed by the State. It was an attempt to break the silence, to speak about the past, as the memory organizations themselves had demanded during the 1980s and 1990s, but this time with a bias that could be considered negationist and revisionist.³⁹⁶

In that sense, it is possible to speak of ‘anti-memories of politics’³⁹⁷ - memories that, already present in the official discourse and the practices

³⁹⁴ Franco (n 379) 38 (author’s emphasis) (translation: ES>EN).

³⁹⁵ In that vein, Vezzetti criticises the use of the expression ‘two demons’ in the debate about the past: ‘The blueprint - or rather, slogan - of “two demons” is an empty cliché that satisfies no one. It does not satisfy those who have sought to justify the massacre committed by the State; neither is it helpful for those who want to discuss that past, those who - although they refute both that the two forms of terrorism are equal and the explanation that the dictatorship was a reaction to guerrilla provocation - call for the revision, discussion and a decision on the terms and responsibilities of the armed parties in the social and political catastrophe of those years’ (Hugo Vezzetti, *Sobre la violencia revolucionaria: memorias y olvidos* (Siglo XXI, Buenos Aires 2009) 129 (translation: ES>EN)).

³⁹⁶ It is possible to draw a parallel with the similar situation that Funes recalls (n 392) 45) in relation to memories of politics in the 1980s in Argentina: ‘[...] the mechanism is completed by the well-rounded and laborious campaign to negate the repression, in the face of condemnation from international fora. Huge official publicity campaigns took it upon themselves to impose this “common sentiment”. “We Argentinians are lawful and humane” [*Los argentinos somos derechos y humanos*], in allusion to the term “*derechos humanos*” - human rights in Spanish - relativizing the slogan “human rights”], “there are no disappeared persons”, and so many other slogans which aimed to contradict the condemnations, casting them off as false accusations, if not damaging and insane (“The madwomen of Plaza de Mayo”, alluded to the Mothers of the Plaza de Mayo [a women’s movement formed by women whose children had disappeared in the Argentine dictatorship and who ask for their appearance in life, in public marches held every week] in the Plaza de Mayo in Buenos Aires)’ (translation: ES>EN).

³⁹⁷ From Nora Rabotnikof’s ideas on memories of politics (‘Memoria y política a treinta años del golpe’ in CE Lida; H Crespo & P Y. (eds), *Argentina, 1976. Estudios en torno al golpe de Estado* (Fondo de Cultura Económica, Buenos Aires 2008) 260-61).

consolidated by the dictatorial State, are emerging once again but this time as an alternative view or one supplementary to the supposedly ‘complete’ truth. The publication of *Brasil: Sempre* (Brazil: Always) in 1986 serves as the pioneering example of this.³⁹⁸ It was a document written by an Army officer as a ‘response’ to redemocratization and the publication of the *Brasil: Nunca Mais* (1985). It ‘justif[ies] the political repression, which [the Armed Forces] claimed to have effected “to save the country from the communist monster and from internal chaos”’.³⁹⁹ The book’s cover used a similar font to that used for *Brasil: Nunca Mais*, but on a green background instead of the red used in the original report - probably to reflect the colours of the Brazilian flag and to contrast the red associated with communism.

Figure 4: Mockup comparing the covers of the two reports, *Brasil: Nunca Mais* (1985) and *Brasil: Sempre* (1986)



Source: author’s own creation, using images found in a *Google* internet search.

³⁹⁸ The book defines itself, on the cover, as ‘a book that praises and appraises the work and political power of shared information, criticising the actions of the progressives; it analyses the actions of the communists and left-wing organizations, supports the establishment of a great right-wing national party, and also provides interesting revelations such as the Brazilian troops’ preparations to invade Uruguay in 1972’.

³⁹⁹ Mariano Cerruti, Juan Manuel Domínguez Rotta & Matías Tapia, ‘Fuerzas Armadas y Derechos Humanos en Brasil: ¿Una asignatura pendiente?’ (IV Seminario Internacional Políticas de la Memoria – “Ampliación del campo de los Derechos Humanos: Memorias y Perspectivas”, mesa 22, Buenos Aires 2011) 11 (translation: ES>EN).

Eduardo Heleno de Jesus Santos also conducted an exhaustive study addressing the memory, ideology and politics of groups of civilians and reserve soldiers in Brazil.⁴⁰⁰ In his work, the author studies groups such as *Guararapes*, *Inconfidencia*, *Independiente 31 de Marzo* and, perhaps the most renowned, *Terrorismo Nunca Mais* (Ternuma), created to be the antithesis of *Tortura Nunca Mais*. These groups were put together ‘for the most part, by officials and civilians who had in some way been involved in breaking down the democratic regime on 31 March 1964’, and sought to ‘question and protest the direction taken by the Armed Forces in the New Republic’.⁴⁰¹ Santos summarises their motives and means:

The dissatisfaction that brought about the emergence of these groups arose from various factors such as reduced military prerogatives, the difficulties the government was having in resolving the political crises generated by corruption scandals, the reduction in the State’s role, press versions of memories of the military regime, and a supposed advance of communism in Brazil. Their general means of action was to produce letters and manifestos, printed journals, websites and events, in which they propagated their ideological beliefs, which had a nationalist and anti-communist nature. The premise behind this trend, is the idea that the Armed Forces are the institution championing the nation’s moral reserves, particularly in times of crisis. During times of political turbulence, some investigated groups managed to capture the media’s attention to promote - in apocryphal manifestos and letters - the closure of Congress, reviving the ghost of a new military coup. They also drew media attention as they began the process of revising the crimes that took place during the dictatorship, disseminating manifestos and sharing information on former soldiers of left-wing organizations, taken from intelligence agency archives. By these means they not only sought to perpetuate their own view of the military government - emphasising their resentment and their stance in the battle for memory - but also to criticise the government of the time.⁴⁰²

As already mentioned, there remained considerable factions in the Armed Forces who still claimed 1964 was a ‘revolution’ or ‘counter-

⁴⁰⁰ In Argentina, similar organizations sought to demand a supposedly ‘complete memory’ of the recent past. A notable example is the Centre for Legal Studies on Terrorism and its Victims (CELTYV). For more on the CELTYV’s (anti)memories and political action, see Palmisciano (n 383).

⁴⁰¹ Eduardo Heleno de Jesus Santos, *Extrema-Direita, Volver! Memória, ideologia e política dos grupos formados por civis e militares da reserva* (MPolSci thesis, UFF, Niterói 2009) 7

⁴⁰² *ibid* (twice translated: PT>ES>EN).

coup'. Pereira notes that 'the concept of a counter-coup is a form of revisionism, but it can also be understood as negation of the beliefs its own soldiers held about the coup' (that it was an 'authentic revolution').⁴⁰³ Meanwhile, 'a counter-revolution, or the restoration of an established order, would not allow for the introduction of institutional acts' - decrees issued by a hierarchy superior even to the Constitution, invented and used by the regime to legislate and govern directly - meaning that, by referring occasionally to the coup also as a 'counter-revolution', its supporters and sympathisers create a contradiction: that is to say, by avoiding revolution, the counter-revolution accepts the legitimacy of the armed fight method, in agreement with the liberal tradition founded on the right to resist, even violently⁴⁰⁴ - which is actually not what happened, considering that the oppositionist armed fight was always repressed by the regime, which operated outside its own legality.

With regard to the role of the Armed Forces as a federal state entity, Mariano Cerruti, Juan Manuel Domínguez Rotta and Matías Tapia discuss the lead up to the establishment of the Ministry of Defence, beginning, notably, with the National Defence Policy during the FHC government in 1999 and the attempts under Lula da Silva to rework the role of the Defence Ministry, with the National Defence Strategy (END) in 2008. The authors suggest that the Ministry contributed little to the widening of civil control over the Armed Forces, as 'the military had a dominant role in its establishment and its operation, holding the majority of the positions within the Ministry and continuing to enjoy the prerogative of acting from within it'.⁴⁰⁵ Given the Ministry's generally favourable view of the 1964 regime, this served to strengthen 'anti-memories'.

At times, these anti-memories have public repercussions. An example of this is the note signed by hundreds of reserve soldiers, criticising the actions of their superiors in federal government (the Minister of Defence and the President of the Republic) with regard to the CNV. The timid responses of the Armed Forces themselves to these reactions or, further still, the forces' reaffirmation of those criticisms, culminated

⁴⁰³ Mateus Henrique Pereira, 'Nova direita? Guerra de memória em tempos de Comissão da Verdade (2012-2014)' (September/December 2015) 31(57) *Varia Historia* (Belo Horizonte) 873.

⁴⁰⁴ *ibid* (twice translated: PT>ES>EN).

⁴⁰⁵ Cerruti, Rotta & Tapia (n 399) 8 (translation: ES>EN).

in a situation where the Ministry of Defence was unable to assert itself as a central authority in the polemic. This makes it possible to suggest that the same State that was promoting politics of memory was simultaneously consolidating ‘politics of anti-memory’. In that sense, they become state policies for influencing how collective memory in the country takes shape.

The strategies for arguing these anti-memories have changed, to the extent that they have become public, as Moreira notes:

[...] the once avoided issue of torture has since been openly relativized as a counteraction to the alleged executions carried out by the armed left. This academic field began to present itself as a silenced group, the victim of ‘leftist revenge’, in a peculiar case in which it is the winners’ memories that are driven underground.⁴⁰⁶

They are anti-memories of politics and politics of anti-memory because, as mentioned, they do not lead to the recovery of memory and to the construction of the truth about the recent past through accounts and beliefs that question the official discourse of the terrorist State and the reign of national security in Brazil between 1964 and 1985. That does not bring a valuable contribution. Instead, they echo the official version of the authoritarian State and seek to prevent that State from ‘apologising’ for its actions, decades later,⁴⁰⁷ while attempting to delegitimise opposing memories. It is a ‘political use of memory which is forced to match the interpretation of the leaders of the era’,⁴⁰⁸ enabling a truth to reign that is deemed unacceptable from the perspective of the policies on memory.⁴⁰⁹ This results in a radicalised form of revisionism: negationism.

In the face of the idea traditionally and constantly propagated by supporters and former members of the military regime - that the vanquished in the ‘revolutionary war’ became the victors in the ‘war of memory’⁴¹⁰ - Napolitano argues that the reigning memory on the

⁴⁰⁶ Fernanda Teixeira Moreira, ‘O Que Lembrar e Esquecer? Intelectuais de direita e as disputas pela memória da ditadura civil-militar’ (XIV Encontro Regional da ANPUH-Rio: Memória e Patrimônio, UniRio, Rio de Janeiro 2010) 6 (twice translated: PT>ES>EN).

⁴⁰⁷ In reference to the Amnesty Commission Caravans’ practice of issuing apologies.

⁴⁰⁸ Tarso Genro, *Teoria da Democracia e Justiça de Transição* (Aula Magna in the Federal University of Minas Gerais (UFMG), 13 August 2009, UFMG, Belo Horizonte 2009) 16-17 (twice translated: PT>ES>EN).

⁴⁰⁹ Bruno Groppo, ‘Las políticas de la memoria’ (trad. de AM Barletta) (2002) 11-12 *Sociohistórica* 196.

⁴¹⁰ Denise Rollemberg, ‘O esquecimento das memórias’ in JR Martins Filho, *O golpe de 1964 e o regime militar* (UFSCar, São Carlos 2006) 84.

Brazilian military regime, even after memory initiatives in the country, would be a 'liberal-conservative' one.⁴¹¹ It would be a symbolic triumph in which the values considered by the left and the principle of democracy would not rise above all else in a 'reorganization of the State and its social relationship', as 'the parameters of Brazilian post-dictatorship democracy are largely forced, and limited by the politics of a military regime sanctioned by its civilian supporters during the process of political transition':

[...] the reigning memory of the Brazilian military regime became a more complex and contradictory construction process, mixing symbolic elements of the left, effectively shattered in the political processes, and the partial atonement of liberal sectors that helped to set up the regime. As such, we are not confronted with a reigning memory constructed solely by the vanquished. [...] By giving abstract praise to the resistance but concrete condemnation of the actions of certain individuals within it (such as the guerillas fighters), the liberal memory managed to artificially dampen the liberals' role in building authoritarian order.⁴¹²

For all these reasons, Napolitano also speaks of an 'ideological schizophrenia' within the Brazilian State, especially from the post-dictatorship era up to the *Petista* (PT) governments. That is because during that period, Transitional Justice measures coexisted with a reluctance from the Executive to handle matters such as accountability for crimes against humanity and also to debate the memory constructed by the Armed Forces, which often follows the 'reconciliation as a means' paradigm, established with the democratic transition. In summary: on the one hand there were state initiatives for memory, truth and reparations, as well as very specific institutional reforms; on the other, there were internal reactions to those initiatives from within the State's ranks, notably from the armed forces:

⁴¹¹ Napolitano (n 385) 19. In the context of Brazilian politics, the term 'liberals' is often used to refer to conservatives, because of the historical association between economic liberalism and moral conservatism in the country. In my understanding, Napolitano's mention of 'liberals' here aims to cover both progressive and conservative 'Brazilian liberal currents': the first, generally averse or critical of the dictatorship, but also sometimes not very sympathetic to the armed resistance or the idea of taking certain measures of Transitional Justice; the second, sympathetic to the 1964 dictatorship in some manner - e.g. economic indices, and moral or religious guidelines, among others.

⁴¹² *ibid* 18 (twice translated: PT>ES>EN).

[...] the precariousness of making room for three discourses - the critical progressive one, built upon the unconditional defence of human rights (usually under the auspices of the Human Rights Secretariat); the moderate critical one, which defends legal and civil liberties (its epicentre is the Ministry of Justice); and a 'grey zone', which has the power to veto any concrete action to investigate and potentially punish those who violated human rights (housed within the Ministry of Defence and the Armed Forces).⁴¹³

Similarly, Tarso Genro, government minister under Lula da Silva from 2004 to 2010, who headed the Ministry of Justice between 2007 and 2010, draws a parallel between the legacy of 'controlled transition' in Brazil and forgiveness,⁴¹⁴ which:

on the one hand, brought with it an extraordinary advantage by not pitting Brazilians against Brazilians in what could have been an armed and fratricidal struggle. On the other, however, it entailed flagrant disadvantages: it used bureaucratic means to impose the concept of forgiveness, a forgiveness through which the offenders 'forgive' the victims, limiting subjective support for reconciliation.⁴¹⁵

This generated a dynamic between silence and memory in the Brazilian State, a kind of tacit agreement occasionally broken by the memories and anti-memories which generated public debate or which the federal government built into state politics (and policies) - intentionally or not. On the one hand, there was each successive federal administration's silence around and fear of dealing with the accountability of dictatorship officers in particular. This can be seen in the length of time it took the State to make the debate about the recent past public after the democratic transition. On the other hand, there is the Armed Forces' silence, as it avoided discussing the recent past and forced absolute oblivion:

⁴¹³ Napolitano (n 391) 31 (twice translated: PT>ES>EN).

⁴¹⁴ According to Silva Filho ('Memória e reconciliação nacional' (n 389) 292 (twice translated: PT>ES>EN)): 'The issue of reconciliation invokes the entire philosophical and theological debate around notions related to forgiveness, giving, and penitence. And one thing is for sure: in contrary to what the traditional meaning of amnesty seems to suggest, without the necessary practice of forming memory reconciliation cannot happen. Oblivion is an obstacle rather than a basis for reconciliation. Any elimination of memory necessary for social peace will come as a consequence of pain; but without it, without recognising the violence and losses that took place, reconciliation will take on a far more cynical and indifferent appearance, incapable of eliminating the consequences of unresolved memory'. In short, 'to turn the page, you have to have read it first'.

⁴¹⁵ Genro (n 408) 10 (twice translated: PT>ES>EN).

The silence of the Armed Forces in Brazil over the human rights violations its security officers - soldiers or otherwise - committed during the 1960s and 1970s seems to contradict the narratives and discourses given by other State departments and organizations. However, it found support in the prevailing interpretations of the Amnesty Law, in the Judiciary as well as in the Legislative branch. As such, in this case, the convenient silences have combined in the present to suggest that the past must be forgotten for democracy to take effect. This is a case of silence from the perpetrator of violence, which is different from the victim's silence. The perpetrator's silence is reinforced by the official line of the powers that be or by its networks of institutional protection after the political collapse. A victim's silence is the result of trauma. The silence of perpetrators and their political heirs is taboo.⁴¹⁶

At times, the system of silence is broken when politics of memory are contrasted by politics of anti-memory, which arise either as the simple reaction of the institution to policies on memory, or as a proactive means of influencing the direction of those policies. This is what differentiates, for example, the Armed Forces' refusal to make documents from the dictatorship era public from the external pressures for the CNV to investigate and hold the guerrilla groups accountable: both are politics of anti-memory, but they act in different ways, constantly facing revisionism.⁴¹⁷

Napolitano maintains that 'few figures in politics, academia or from the parties claim the dictatorship's legacy for themselves', however, 'with the exception of certain voices on the extreme right' under 'a revisionist process currently under way' (2015),⁴¹⁸ the liberal-conservative memory supposed to have taken root in Brazil does not exactly seem to have become consolidated. The fact that 12% of the population argues that 'in certain circumstances, a dictatorship is better than a democratic regime', that 15% describes itself as indifferent to whether the government 'is a democracy or a dictatorship', and that 7% 'doesn't know', against 66% who favour democracy as the best form of government⁴¹⁹ (as

⁴¹⁶ Napolitano (n 391) 26-27 (twice translated: PT>ES>EN).

⁴¹⁷ Pereira (n 403) 866.

⁴¹⁸ Napolitano (n 391) 17-18.

⁴¹⁹ Compared to 42% in favour in February 1992 (in the context of President Fernando Collor de Mello's impeachment) and 43% in favour in September 1989 (prior to the first presidential election since the dictatorship), the lowest indicated in the historic Datafolha series since democratization. (Datafolha, 'Democracia é melhor regime para 66%', aponta Datafolha', *Folha de S. Paulo* (08 December 2014) <www1.folha.uol.com.br/poder/2014/12/1559020-democracia-e-melhor-regime-para-66-aponta-datafolha.shtml> accessed 7 July 2019).

revealed by the *Datafolha* survey after the 2014 presidential election), a significant 34% of the population remains who, during the same period as Napolitano's study, can be described as having been in a state of oblivion, amnesia, a grey zone, or in revisionism or negationism of the 1964 military regime.

Trying to explain the delay or even absence of politics of memory in Brazil between the redemocratization and the establishment of the CEMDP, Barahona de Brito indicates legal, social and institutional aspects (respectively, the Amnesty Law, the absence of strong coalitions around the matter (compared to other countries), and the continuity between the old regime and the new government indirectly elected in 1985), as well as highlighting a structural element relevant for gaining an understanding of Brazilian mentality:

How can this absence or 'delay' be explained? First, relatively few people had disappeared, and most of those that had were members of two isolated guerilla groups rather than prominent members of national parties; what is more, the worst repression had been concentrated in two areas, São Paulo and Araguaia in the state of Pará, and had taken place 15 years before the transition. Second, Brazilian society is accustomed to high levels of structurally embedded violence, systematic torture, and tolerance for impunity. It is hardly surprising, then, that there was not much protest against the deaths of a few guerilla fighters in a remote jungle region. Indeed, public and private security forces killed more peasants while protecting landowning interests than political dissidents under military rule: according to the Landless Workers' Movement (MST), there were 1,188 assassinations between 1964 and 1986 and all but a handful have gone unpunished (Barahona de Brito y Panizza, 1998).⁴²⁰

In a certain sense, Barahona's assertions chime with some of the premises present in the public imagination in Brazil, especially with regard to victims of the dictatorship. Ideas such as the *exteriority of society* in the face of state repression and the *myth of innocence of the 'real' victims* - those not involved in 'terrorist' acts - are schools of

⁴²⁰ Alexandra Barahona de Brito, 'Truth, Justice, Memory, and Democratization in the Southern Cone' in AB Brito, C González-Enríquez & P Aguilar (eds), *The Politics of Memory: Transitional Justice in Democratizing Societies* (Oxford University Press, New York 2001) 125-26.

thought⁴²¹ that fuel the idea of a *dictablanda* (or soft dictatorship)⁴²² in the Brazilian case. This guides it towards a sort of ‘specific species of Brazilian dictatorship, because it means exhuming the ghosts of Brazilian cordiality, a double-edged - but sharp - sword which has always served as a veil of the most generalized violence of a sociability marked by the permanence of dominations’.⁴²³

In fact, for the general Brazilian population, while ‘absolute oblivion’ or the grey zone did not equate to total amnesia, they do find a place within the search for political consensus over the recent past. That, as mentioned in point 2.1, gives a better understanding of why the memoirs written by former militants opposing the dictatorship that gave a ‘conciliatory’ or ‘repentant’ version of events had more success than those that praised the political actions of the past. Memoirs containing a socially acceptable version⁴²⁴ with a (negative) assessment of the guerrilla groups help - as do politics of memory - to shape part of the country’s collective memory (one that is not in a state of amnesia), as they do not totally break away from the guiding silence of transition by ‘reconciliation’. Appealing to these acceptable versions when recalling the topic of the recent past has frequently been done since the end of the dictatorship, whether it is a way of trying to avoid a supposed ‘division between Brazilians’⁴²⁵ due to supposedly ‘revanchist’ actions (such as

⁴²¹ Both components of the ‘myth of innocent society’ (an element of the ‘theory of two demons’), which assigns greater seriousness only to the deaths and disappearances of those not involved in armed activity or even in civil activism against the dictatorship, as well as considering society at the time as a third party to the ‘two violences faced’, despite having participated, at times, in the civil-military dictatorship. The use of the term ‘terrorism’ to bestow a negative classification on the actions of armed groups who opposed the dictatorial State is notable. This is a rhetorical device commonly used to contradict or minimise the idea of state terrorism (as a factor that drove the armed actions of many of these groups) or of torture, death and disappearance (generally, of the members of said groups). It is present, for example, in the naming of the group *Terrorismo Nunca Mais*, so-named, as mentioned earlier, in direct opposition to *Tortura Nunca Mais*.

⁴²² An idea developed by O’Donnell, Schmitter & Whitehead (*Transiciones desde gobiernos autoritarios. Conclusiones tentativas sobre democracias inciertas* (Paidós, Buenos Aires 1998) 23-24), to refer to dictatorships undergoing a liberalization process. The influent journal *Folha de S. Paulo* used it in their editorial in 2009 to refer to the entire 1964-1985 regime (available at www1.folha.uol.com.br/fsp/opiniao/fz1702200901.htm) accessed 14 July 2019).

⁴²³ Roberto Vecchi & Regina Dalcastagnè, ‘Apresentação’ (January-June 2014) 43 *Estudos de literatura brasileira contemporânea* (UnB, Brasília) 11-12.

⁴²⁴ Raboutnikof (n 397) 266.

⁴²⁵ Suellen Neto Pires Maciel, ‘La experiencia traumática brasileña: notas para una reflexión inicial sobre los desafíos de la memoria y del trabajo con los documentos’ (IX Seminario Internacional Políticas de la Memoria – “40 años del golpe cívico militar: reflexiones desde el presente”, Buenos Aires 2016) 9 (translation: ES>EN).

the CNV), or instead used as a basis for negationist arguments about the civil-military dictatorship and political repression, demonizing the opposition (especially the armed opposition) to the regime as error or as 'terror'.

Beyond a discussion of the 'two demons' rhetoric, for example, and surpassing the barriers of absolute oblivion, state memory policies enable the State that has committed human rights violations in the past to commit to seeking to overcome the barriers of memory and the authoritarian legacy remaining within its ranks and in the public imagination, and so to break the institutionalised silence. To give an example, the first pages of the book/report 'The Right to Memory and the Truth' published in 2007 demonstrated the CEMDP's understanding of what the Brazilian State officially considered its own role to be as a State, in terms of policies on memory and reparations:

In redemocratization, the Brazilian State was also carrying out the role of a sort of historical judge, by recovering memory and truth. Clashing accounts could not continue to coexist: there were innumerable false communications concerning escapes, accidents and suicides, issued by the security agencies during those dark times; and then there were the allegations of human rights violations, which were unfortunately proven to be true in the end.⁴²⁶

Curiously, a certain optimistic viewpoint prevails in the historic retrospective given by the book/report, which begins with the start of the Brazilian dictatorship and ends with redemocratization. With regard to overcoming the institutional legacy left by the military regime, it says that 'during the 1990s, the political institutions were already functioning in total normality, with a stable coexistence in place between the three branches of the Republic'. In fact, that was a sign of a normality that had been brought about by the slow transition towards democracy. Under this lens, during that transition, democracy is measured by the mere victory of the opposition to the dictatorship party, in another indirect election (as since 1964), carried out in 1985, and then by the creation of a Federal Constitution by a non-exclusive constituent assembly. Notwithstanding, the report goes further, stating that:

⁴²⁶ CEMDP (Brasil) 'Direito à Memória e à Verdade' (n 336) 18 (twice translated: PT>ES>EN).

Entering the 21st century, Brazil showed that it held all the ingredients of a true political democracy. It therefore meets all the conditions to be able to overcome the remaining challenges facing the enactment of a robust and active system that protects human rights.⁴²⁷

Belisário dos Santos Júnior, a lawyer and member of the CEMDP (representing civil society) from 2001 to 2016, gave a positive view of the Commission's achievements in his comments for the book/report *The Right to Memory and the Truth*: 'the work and protestations of the Special Committee have helped to alleviate the pain - to a certain extent - of families whose relatives died or disappeared'. On the other hand, he warns that 'sectors - notably, of the Federal Police and the Armed Forces - did not collaborate by providing the information that was available to them. There was news of fires, disappearing documents, but no culprit was ever punished'. Santos Júnior also maintained that the deaths and disappearances are not a democratic cause in Brazil. He spoke out, saying that 'the 1979 Amnesty Law is not able to benefit those who committed torture or other similar crimes, such as forced disappearances'.⁴²⁸

Santos Júnior's critical commentary was included in an official report by the Brazilian State, one that drew critical conclusions and also praised the actions taken by the federal governments from FHC to Lula concerning policies on memory and reparations. It came in the period immediately prior to the Amnesty Commission's politics of memory.

As seen, the Amnesty Commission was responsible for introducing the concept of Transitional Justice as a standard for its reparations and memory policies from as early as 2007. Its policies had greater impact in universities, for example, where the Amnesty Caravan sessions took place, or in sectors of academia or of civil organizations that were already in some way involved in matters of human rights.

Roberta Baggio, Amnesty Commission member between 2007 and 2016, highlights that, as the Amnesty Commission's politics of memory began in less publicised educational spaces such as schools and

⁴²⁷ CEMDP (Brasil) 'Direito à Memória e à Verdade' (n 336) 29 (twice translated: PT>ES>EN).

⁴²⁸ *ibid* 45 (twice translated: PT>ES>EN).

universities, they were not widely shared by the media.⁴²⁹ As such, she believes that the PNDH-3 and the CNV (the result of that programme) were larger targets for controversy as they dealt in political negotiations and a legislative process in Congress, spheres in which the Amnesty Commission did not directly involve itself. Although it also participated in drawing up the PNDH-3, helping to ensure that the matter was made public for a year (2008-2009), the Amnesty Commission enjoyed independence in terms of the memory projects it rolled out, always in cooperation with its parent Ministry, the Ministry of Justice, but not relying on any other partnerships:

[Our action] was [focused on] promoting theatrical productions, arranging film productions (through the Marks of Memory public appeal), carrying out public trials on behalf of the Amnesty Commission. They were more modest [activities], but with a much greater impact on society.⁴³⁰

On the other hand, Baggio indicates that the pact of silent transition in Brazil was the main limit to the reach of the Amnesty Commission's work. This pact 'created a narrative that we should look to the future not the past, one that held no one accountable. That was the reason why [the Amnesty Commission's politics of memory] were never included in a political agenda or a presidential debate'.⁴³¹

José Carlos Moreira da Silva Filho highlights how the Commission's merit lay in 'sharing debate and academic research in universities', and making it a policy to 'teach the continuation of authoritarianism, and the lack of democratic culture in the country'.⁴³² Three years after his exit from the Commission - as part of the dismissals under the Michel Temer government - Silva Filho gave a positive assessment of the Amnesty Commission's legacy: 'I believe it was a State entity that, during that time, drove a great deal of debate in society and was responsible for extremely relevant symbolic and public actions, whose impact we perhaps do not have a means of measuring just now, and that could be

⁴²⁹ Interview with Roberta Camineiro Baggio, Professor, Faculty of Law, Federal University of Rio Grande do Sul (Buenos Aires, Argentina, 12 July 2019).

⁴³⁰ *ibid.*

⁴³¹ *ibid.*

⁴³² Interview with José Carlos Moreira da Silva Filho, Professor, Law School, Pontifical Catholic University of Rio Grande do Sul (Buenos Aires, Argentina, 15 July 2019) (twice translated: PT>ES>EN).

measured in the decades to come'.⁴³³

As has been seen, there was a widening of policies on memory in Brazil under the Lula da Silva and Rousseff administrations which, culminating in the establishment of the National Truth Commission, led to a certain rupture in the Armed Forces' silence, beginning with more emphatic reactions from reservist soldiers against these policies - this is what I have called politics or indeed policies of anti-memory. After Rousseff's impeachment, there was a breakdown of the federal government's programme. This led to the gradual stoppage of the politics of memory pushed over the last two decades,⁴³⁴ once again destabilising the balance between silence and memory in the Brazilian State.

As proof of this, of the CNV's 29 final recommendations to the Brazilian State in its final report in 2014, to date (2020) only five have been effectively carried out and six partially so, while 18 have been left incomplete. Notably, the Armed Forces still have not accepted any blame, officers have not been held accountable, there has been no ban on defending the 1964 coup,⁴³⁵ and the National Security Law - the regulatory legacy of the military regime's doctrine of national security - has not been repealed.⁴³⁶

The CNV also acknowledged the genocide of approximately 8,300 unidentified indigenous persons, due to exile, removal, killings, massacres, forced labour, the regime's land policy, and the imprisonment, torture and forced disappearances that were systematic during that period. But even in its report, the CNV does not cite these deaths in Volume 3 - where the deaths and disappearances of identified persons are listed - but as a 'conceptual text' in Volume 2. When added to the Brazilian State's indigenous policy - as much as or more scarce than

⁴³³ Moreira da Silva Filho (n 432).

⁴³⁴ Ana Paula Brito ('Rompiendo el silencio institucionalizado en Brasil: los memoriales sobre la dictadura y las políticas públicas de memoria' (June 2018) 8(16) *Aletheia* 13), believes 'the interrupted process of memorialization was part of the landscape of government public policies rather than State ones. The guideline still does not involve civil society, only groups whose demands were looked after by the government in power' (translation: ES>EN).

⁴³⁵ 'Is it possible to hold individuals accountable for exposing groups who express support (for various reasons, whether exaggerated, real, metaphorical or even ironic) for the "return to the dictatorship" or "of the military"?' Pereira (n 403)⁸⁸⁵ (twice translated: PT>ES>EN).

⁴³⁶ Hyury Potter, 'Quatro anos depois, Brasil ignora maioria das recomendações da Comissão da Verdade', *Aos Fatos* (29 March 2019) <<https://aosfatos.org/noticias/quatro-anos-depois-brasil-ignora-maioria-das-recomendacoes-da-comissao-da-verdade/>> accessed 15 July 2019.

the policies on memory cited in the present work - this shows another shortcoming in matters of human rights and democratization that the State has not resolved, with regard to memory, truth and justice for indigenous peoples. Peasants - individuals and groups - face a similar situation.

In the light of all of that, and to once again take the words of Napolitano, 'we are confronted by a conflict that shows - when taking an evaluative and conceptual approach - opposing forces of action, with no centralised point within the State able to superimpose its political view on another'.⁴³⁷ In the words of Patricia Funes, '[we believe] that forms of memory also have historicity and that social demands for justice and truth are dynamic, imprinted in the socio-political context that created them and framed by power relations'⁴³⁸. That is how the 'memory of the vanquished' seems not to have consolidated itself - even partially - against the 'memory of the victors', despite the considerable - if at times contradictory - politics of memory promoted by the Brazilian federal government.

⁴³⁷ Napolitano (n 391) 31 (twice translated: PT>ES>EN).

⁴³⁸ Funes (n 392) 44 (translation: ES>EN).

CONCLUSION

This thesis proposed an investigation of the Brazilian federal government's politics of memory on the recent past, during the presidencies of Lula da Silva (2003-2010) and Dilma Rousseff (2011-2016) - both of the PT. These governments were selected as it was under them that these policies gradually gained ground, as much in public debate as in the government agenda, moving past a landscape in which silence over the past prevailed and towards the main policies in that area (such as the publication of the CEMDP's report 'The Right to Memory and the Truth', or the Amnesty Commission's and also the National Truth Commission's policies on reparation and memory).

Addressing the specific objectives initially proposed, it became evident that it was possible to conduct a comprehensive background study for the thesis topic, bringing together various sources on politics of memory under the post-dictatorship federal governments in Brazil. This included books, scientific articles, and reports. Beginning with a theoretic-conceptual and regulatory framework for the issue, it was possible to describe and analyse the politics of memory that federal governments pushed after the transition to democracy in Brazil, until arriving at the policies on reparation, memory and truth between 2003 and 2016 (this study's focal era). The focus was on the establishment of bodies and agencies installed within the government's federal structure, on the content of presidential speeches of the time that discussed memory, and on the federal government's internal disputes around politics of memory. Finally, it was possible to conduct a brief analysis focusing on the institutional conflict between memories and anti-memories, which took root within the framework of state policies on the recent past. This demonstrated the memory that emerged from all of these initiatives. In summary, the research objectives can be considered to have been met.

After the exhaustive study conducted here, it can be said that the federal policies on memory implemented during the period studied were implemented in various ways: symbolic reparations, psychological reparations, official publications (reports, documents, memoirs), repression-era archives, academic studies, commemorative monuments, cultural and educational projects, work groups conducting body searches, and a National Truth Commission. The approach that Transitional Justice took was the driving force behind a restructuring of the Amnesty Commission, highlighting - in the words of at least one former Commission member - that, 'economic reparations were a drop in the ocean' compared to the possible means of and policies on reparations, memory and truth. The fact that many of these policies on memory are based around reparations (the fulcrum of Transitional Justice in the country) and the search for truth, and that the reparations, memory and truth commissions have often consulted each other on one another's operations, shows the broad nature of the politics of memory of the recent past in the country.

Ideas such as 'national union', first touted by the Lula da Silva administration, presented an obstacle to revisiting the recent past, with Lula confirming on one occasion that the dictatorship had been defeated by a public 'with deep democratic beliefs', which made it a 'closed' issue. In his second administration, Lula brought no greater changes to the discussion around memories of the past, although increasing numbers of public policies on memory and truth, coming particularly from the Amnesty Commission and the PNDH-3, saw him express himself more directly on the matter, particularly with regard to defending the memory and honour of people persecuted by the State in the past. The first Dilma Rousseff administration struck a markedly different tone. It saw the passing of the new LAI and the CNV in action. Historical discourses focused on the civil and political rights of the people, the fight for redemocratization and the importance of the legacy of memory and truth for future generations. The second Dilma administration, although brief and devoid of discussion about memory - due to a failure to effectively and immediately follow the CNV's final recommendations - warned that the military regime had come to power after a coup, extending the same argument in response to the controversial impeachment process she was facing.

Nevertheless, there were significant barriers to memory: the democratic transition was based on the concept of 'reconciliation as a means' to achieve it, having come to be through indirect presidential elections and a non-exclusive constituent assembly; the State's 10-year silence before the first policies aimed at reparations and memory (through the CEMDP); and

the absence of accountability policies, due to the original interpretation of the Amnesty Law persisting (after the STF ruling). Institutional reforms did not substantially alter the organizational structure of the Armed Forces beyond making the role of Defence Minister a civilian position, while anti-memories of politics put pressure on the federal government's politics of memory, creating what I have called politics and policies of anti-memory. This began with reactions within the federal State's ranks against improving policies on memory, as happened, notably, in the case of the CNV.

With Dilma Rousseff's removal in 2016, the federal government gradually retreated into silence over the recent past and politics of memory gradually disappeared from the government agenda, while the Amnesty Commission reverted to a role that was limited to assessing requests for political amnesty, with a reduction in the number of cases it appraised and a considerable increase in rejected requests.

On 27 August 2018, the Human Rights and Minorities Committee (CDHM) of the Brazilian Chamber of Deputies held a formal sitting in honour of the 39th anniversary of the passing of the Amnesty Law in 1979. The event brought together organizations of direct victims of State terrorism, such as the *Associação de Defesa dos Direitos dos Atingidos por Atos Institucionais* and the *Associação Brasileira dos Anistiados Políticos* (ABAP), and once again brought into question the fact that the Law pardoned crimes committed by the State during the military regime. On that occasion, Rosa Cimiana dos Santos, one of the representatives of amnestied persons, criticised the delay in the process of assessing requests for political amnesty and compensation. She highlighted that 'people are dying, for example a peasant living in the State of Goiás, who had been amnestied but recently died at 92 years of age, without receiving compensation'.⁴³⁹ The distance in time is increasing, but what is referred to as the 'recent past' in Brazil (the dictatorship between 1964 and 1985) is continuing to have practical implications on the lives of direct and indirect victims of the military regime still alive and waiting to be granted political amnesty and compensation: as of February 2019, an estimated 11,700 people had pending reparations petitions.⁴⁴⁰

⁴³⁹ Pedro Calvi, 'Sessão Solene na Câmara dos Deputados marca os 39 anos da Lei da Anistia', *Câmara dos Deputados* (28 August 2018) <www2.camara.leg.br/atividade-legislativa/comissoes/comissoes-permanentes/cdhm/noticias/sessao-solene-na-camara-dos-deputados-marca-os-39-anos-da-lei-da-anistia> accessed 11 July 2019.

⁴⁴⁰ André Shalders, 'Governo Bolsonaro: ministra Damare Alves quer endurecer regras para indenizações de perseguidos do regime militar', *BBC* (13 February 2019) <www.bbc.com/portuguese/brasil-47206186> accessed 15 July 2019.

By the late 2010s, the recent past also continues to influence public perceptions of democracy, seen at its clearest in the federal government's public agenda. However, contrary to the path towards politics of memory embarked upon during the democratic transition, now speeches and administrative and regulatory measures are showing a tendency towards politics of anti-memory, with elements of historical revisionism and negationism.

Beginning with the maxim that only 'dogs seek bones' - referring to the search for the remains of the dead and missing in Araguaia - current president of the Republic, Jair Bolsonaro, saw his popularity explode as he adopted opinions and practices considered 'unpopular' or 'politically incorrect' in relation to the military regime and direction of the public human rights agenda in Brazil. He became a role model, breaking the silence of many individuals and groups in society who, until then, had not felt comfortable sharing anti-memories of the recent past, such as negationist and revisionist groups. The speeches of *Terrorismo Nunca Mais*, for example, rarely addressed anyone outside of the sphere of people already sympathetic to their cause.

In 2014, Bolsonaro spat on the bust of Deputy Rubens Paiva, who was tortured and died at the hands of the regime in 1971. He openly paid tribute in National Congress - without facing any legal repercussions - to the late Colonel Brillhante Ustra⁴⁴¹ as *o pavor de Dilma Rousseff* (which loosely translates as 'Rousseff's dread' or 'Rousseff's worst nightmare') during the session of voting to open the impeachment process against the then-leader, in 2016.⁴⁴² Of his 500 speeches as a federal deputy between 2010 and 2018, 56 were devoted to criticising the National Truth Commission. In one, he said: 'Relatives of the dead and missing, you should be ashamed: either you were crying or the whole Brazilian nation was'.⁴⁴³

Many of the anti-memories of Brazil's recent past aim to establish victims of 'terrorism' or 'subversion'. Possibly the most well-known case

⁴⁴¹ The personal torturer of Rousseff under the regime and legally recognised as such in 2008, on account of his actions.

⁴⁴² Emerson Maione & Matheus Carvalho Hernandez, 'Justiça de Transição e Lutas Sociais em Aliança: Quebrando o Silêncio Atual?', *Boletim Luã Nova* (1 April 2019) <<https://boletimluanova.org/2019/04/01/justica-de-transicao-e-lutas-sociais-em-alianca-quebrando-o-silencio-atual/>> accessed 15 July 2019.

⁴⁴³ Gustavo Fioratti, 'Bolsonaro inflou antipetismo ao se opor à Comissão Nacional da Verdade', *Folha de S. Paulo* (23 October 2018) <www1.folha.uol.com.br/poder/2018/10/bolsonaro-inflou-antipetismo-ao-se-opor-a-comissao-nacional-da-verdade.shtml> accessed 15 July 2019.

was that of soldier Mário Kozel Filho. In 2018, this soldier was formally honoured by the Brazilian Army on the 50th anniversary of his death, which was caused when guerrilla opposition groups threw a bomb at the military headquarters at which he was stationed. On that occasion, the Army Commander declared him the ‘innocent victim of terrorism’.⁴⁴⁴ In addition to the intention to cultivate a memory of these people, deaths arising from actions taken in opposition to the regime are used as anti-memories. The aim is to silence the debate around the only terrorism that took place during the military regime: that of an undemocratic State that, although operating as a rule of law, did not even act within its own legality. These anti-memories fail to indicate that those deaths were brought about by armed groups with different motivations but who neither had organised military power nor were acting in the role the State was supposed to occupy at that time (an organised political system). Nor do they acknowledge that the regime had already persecuted, tortured, condemned or killed opposition individuals or groups for those deaths who, if they survived, were amnestied only post-sentencing. All this supposing that the armed groups had acted within the framework of a democratic constitutional state, which is not the case.

On that matter, the homage was given the day after the Inter-American Court of Human Rights issued Brazil with a new condemnation, for the torture and assassination of journalist Vladimir Herzog in 1975, and for the State’s failure to accept accountability since. To date, the State has issued no response to that ruling.

As noted throughout this thesis, by the late 2010s it was possible to talk of a decrease in the ‘ideological schizophrenia’ from the State,⁴⁴⁵ but in terms of increased revisionism and negationism. For example, the CEMDP and the Amnesty Commission remain active, however, the Planalto (the Brazilian Presidential Palace) shared a video celebrating the 1964 coup, federal government has dismantled the CEMDP, and the Amnesty Commission is suffering a process of internal implosion, with the appointment of members who oppose the aims and existence of these Commissions. There is also still no civilian minister in the

⁴⁴⁴ Eduardo Dias Villas Bôas, ‘Homenagem do Comandante do Exército para o eterno herói, o soldado Kozel Filho, morto há 50 anos’, *Exército Brasileiro* (June 2018) <www.eb.mil.br/todos-os-avisos/-/asset_publisher/nEIT00TYrefc/content/reformulacao-da-resenha-diar-1> accessed 14 July 2019.

⁴⁴⁵ Napolitano (n 391) 31.

Defence Ministry, an item proclaimed at the end of the 1990s with the promulgation of the National Defence Policy.

A detailed analysis of the Bolsonaro administration's position and subsequent means of government, fall to future research. For now - at the date of conclusion of this thesis - it is possible to note a rising trend in politics of anti-memory, testing the extent to which federal politics of memory - particularly the Amnesty and Truth Commissions - have been consolidated as State policies. A risk has also emerged of losing a considerable portion of the archival heritage built by the State regarding Transitional Justice in the country, specifically, on the matter of memory and truth: changes have been made to the websites of the Ministry of Women, Families and Human Rights and the Amnesty Commission, while the CEMDP site has been taken down (with the 'Places of Memory' project disappearing from web archives). This demonstrates the current federal government's rejection of all the policies on memory the State has put together over the last few decades.

There is no way to put a final deadline on implementing policies of memory, but if time passes without the formation of a collective memory that is aware of the recent past's truths, this seems to form barriers to memory - such as amnesia and a grey zone - which prevent what Torelly calls a democratic common sense becoming consolidated. In that sense, it is possible to question the extent to which acts of symbolic reparation from the State, for example - compared to other policies on memory or to material reparations - will endure over time. Another potential disadvantage of symbolic reparations, warns De Greiff, is that it becomes possible to argue that the demand for state apologies loses its effect if the State - represented by the Executive - defends the authoritarian periods in the country, as is happening in 2020 in Brazil. That is especially true when it was that same Executive branch, in an even more recent past, that was 'apologising' in the Amnesty Caravans, and was the main driver behind the politics of memory. In other words, if at one point 'the State apologises' for the past and then around ten years later scoffs at the requests for those victimised in that past and those acting in that field, as well as dismissing the construction of state politics of Transitional Justice as an ideological belief, this is a sign that the State, as an entity, has not really remedied its actions.

I understand that the State, or rather the Executive, is not one monolithic block of ideas through which all (state) policies pass unscathed by discussions or reactions within the government in place;

rather, the whole is made up of entities comprising individuals, who disagree among themselves and come to agreements based on their pre-conceptions and actions in relation to the agencies. In Brazil, that is what happened with state policies oriented around memory, truth and reparations, something that was reviewed in detail in Chapter 4. However, on the other hand, the agreements reached by its members as a collective and their resulting final implementation are what - internally - determine the State's activity. This places the policies on memory promoted by the Brazilian State since the 1990s and particularly during the 2000s and the first half of the 2010s as the official position adopted by the State.

As such, faced with possible changes in political direction - such as in the federal government of Brazil in 2016 and in 2018 - and with the natural evolution of a State as a political and social entity, it would be fitting to investigate what limitations there are on the politics of memory promoted by this State after genocide, civil war and political repression when the State in place is, as a State, unable to fully make amends with its people.

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APPENDIX

Trilhas da Anistia (Amnesty Trails) memorials installed during the lead up to 2014, in the cities of (from left to right, and top to bottom) Recife, Rio de Janeiro, São Paulo, Belo Horizonte, Florianópolis and Porto Alegre.⁴⁴⁶



⁴⁴⁶ Images taken from the internet and from: Comissão de Anistia (Brasil), *Relatório Anual da Comissão de Anistia 2014* (Brasília 2016).

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