

# The right to truth in Brazil: A review of challenges and progress

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**Abstract:** *This article examines the progress and shortcomings of the right to truth in Brazil. As Brazil marks 40 years since the military dictatorship ended (1964–85), and with renewed interest owing to the film *I'm Still Here*, the State's debt to dictatorship victims remains significant. While there have been some achievements, many obstacles still hinder the realisation of the right to truth in Brazil. The aim of the article is therefore to critically analyse the effectiveness of the right to truth in the country, while pointing out important facts and events that marked its development. It is expected to locate the current status of the right to truth and to comprehend how far Brazil is from fully implementing this right.*

**Keywords:** *right to truth; enforced disappearance; Brazil; military dictatorship.*

## 1. Introduction

The right to truth has garnered significant global attention, particularly in contexts of addressing historical human rights violations (Méndez and Bariffi 2012). Since its introduction in the International Convention for the Protection of All Persons from Enforced Disappearance (ICED) in 2006, the right to truth has attained the status of a legally binding norm, obligating States to comply with its provisions (art. 24). It reflected the long and difficult struggle especially of victims and their families for information about past human rights violations.

In the Brazilian context, the right to truth is closely tied to human rights violations which occurred during the military dictatorship (1964–85). The struggle for truth emerged as a response to the enforced disappearance

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and other gross violations committed during this period, such as torture. Victims and their families, along with human rights organisations, have continuously demanded clarification regarding the fates of the disappeared<sup>1</sup> and accountability for the perpetrators.

In the year in which Brazil marks the 40th anniversary of the end of the military dictatorship, and with the debate around the period revived by the success of the movie *I'm Still Here*<sup>2</sup> (*Ainda estou aqui* 2024), another issue remains latent in the country: the debt owed by the Brazilian State to the victims of human rights violations committed by the past regime.

This article aims to examine the status of the right to truth in Brazil, and what the key advances and insufficiencies in its effectiveness are. It aims therefore to evaluate the implementation of the right to truth in Brazil, identifying both progress and areas needing improvement. In order to pursue this objective, the article will first expose main developments on the right to truth that culminated with its introduction in the ICED. Then, it will address the right to truth when in contact with and transposed to the Brazilian context. By doing so, it is expected to locate the advances and difficulties faced by this right in Brazil. In the last part of the article, some recent events in the country will be pointed out in order to comprehend how far Brazil is from fully effecting the right to truth.

## **2. The path to the right to truth as an internationally binding legal norm**

The development of the right to truth has evolved significantly over the past few decades, particularly in the context of international human rights law, as a response to gross human rights violations, such as enforced disappearances.

Initially recognised by the Inter-American Commission of Human Rights (IACHR) as a right attached to enforced disappearance (IACHR 1986), the right to truth gained traction through the advocacy of victims' relatives and human rights organisations, particularly in Latin America during the 1970s and 1980s, amidst military dictatorships and widespread abuses.

- 1 Regarding the nomenclatures used, it is useful to point out that the term "disappeared" refers to those who, until the enactment of Law 9.140, in 1995, had not been publicly declared dead by the repression and who, still without a death certificate, had their bodies hidden; the term "dead", in turn, covers cases in which an official version of the death of political activists and prisoners was drawn up (by members of the regime), even if the hiding of their bodies continues to this day, in a similar way to the first group.
- 2 The movie, directed by Walter Salles, portrays the story of Eunice Paiva, a mother and activist, coping with the forced disappearance of her husband, the politician Rubens Paiva, during the military dictatorship in Brazil.

Historically, the right to truth was linked to international humanitarian law, with early references found in the Additional Protocol I to the Geneva Conventions of 1977, which emphasised the need for families to know the fate of missing persons (art. 32).

This right began to take shape through early United Nations (UN) resolutions that addressed the issue of missing persons, emphasizing the need for families to know the fate of their loved ones (for e.g. UNGA Resolution 3450 (XXX) 1975; UNGA Resolution 32/128 1977; UNGA Resolution 33/172 1978). Although these Resolutions did not explicitly mention a right to truth, they reflected an awareness of the anguish caused by the lack of information on the fate of missing persons. Initially related to the situation in Cyprus, and later in Chile and Argentina, the concern with enforced disappearance would rise significantly in the UN. It was in this context that in 1980 the UN Commission on Human Rights established a Working Group on Enforced or Involuntary Disappearance (UNGA Resolution 20 XXXVI 1980), whose work has, since then, contributed to the promotion of the right to truth worldwide.

In the 1985–86 Annual Report, the IACHR began recognising the right to know the truth about past events not only as an emerging principle, but also as essential for preventing future violations. In its initial formulation, the IACHR asserted that societies have an inalienable right to know the truth about past atrocities (IACHR 1986, ch. V).

In the late 1980s and early 1990s, the right to truth became closely associated with the fight against impunity, seeking to challenge State laws that granted amnesty to perpetrators of such violations (Naqvi 2006).

During those decades, the authoritarian regimes that served as the foundation for the development of the right to truth were approaching their conclusion, with the beginning of a new democratic period in several countries, including Latin America and East Europe, after the fall of the communists' regimes.

As a result, the right to truth was incorporated into this new process, becoming a crucial component of transitional justice efforts. It was then recognised not only as a means for victims to seek acknowledgment and justice, but also as a societal necessity to prevent future violations and promote reconciliation (UNCHR 1997). As a reflection of this understanding, truth commissions emerged as a significant mechanism to establish the right to truth, with the notorious examples of the Argentinian and South African Commissions.

With the right to truth gaining new contours, it would enter a new phase, culminating in significant developments through various human rights courts, such as the Inter-American Court of Human Rights

(IACtHR) and the European Court of Human Rights (ECtHR). The IACtHR, for instance, has played a pivotal role in developing the right to truth, particularly in cases related to enforced disappearances. The Court, similarly to the Inter-American Commission, has addressed numerous cases in which there was an interest on behalf of the States to maintain the human rights violations undisclosed and unresolved. The demand of the victims, however, propelled the struggle for the clarification of these situations into the contentious sphere.

Initially, the IACtHR did not explicitly recognise the right to truth. In the case of *Velasquez Rodriguez v. Honduras* (1988), it expressed a concern with resolving cases through the investigation by the States of the facts concerning the violations and the prosecution and punishment of the alleged perpetrators, although limiting itself to ordering the States solely to pay pecuniary compensation.

However, it was from the duty to investigate that the IACtHR subsequently, in its jurisprudence, embraced the right to truth, understanding that it derives fundamentally from the right to access to justice, i.e., a combination of Articles 8 and 25 of the American Convention on Human Rights (ACHR). In the case of *Bámaca Velásquez v. Guatemala* in 2000, the IACtHR established a link between the obligation of States to investigate human rights violations and to provide clarity to victims and their families. The Court has emphasised that the right to truth is essential for victims and societies to know the circumstances surrounding human rights violations, serving as a means to prevent future abuses and ensure accountability.

The ECtHR, on the other hand, has been more cautious in its recognition of the right to truth. Primarily, it has evolved through cases involving enforced disappearances and serious human rights violations. Initially, the Court recognised the distress experienced by relatives of disappeared individuals due to a lack of information regarding their loved ones fates (*Kurt v. Turkey* 1998; *Tast v. Turkey* 2000; *Orhan v. Turkey* 2002; *Bazorkinat v. Russia* 2006).

Over time, the ECtHR has acknowledged the importance of the right to truth under the procedural aspect of Articles 2 (right to life) and 3 (prohibition of torture) of the European Convention on Human Rights, particularly in the context of investigations into human rights violations. For instance, in the case of *El-Masri v. The Former Yugoslav Republic of Macedonia* (2012), the Court highlighted the obligation of States to investigate effectively and to provide victims and their families with information about the circumstances surrounding the violations. Furthermore, the ECtHR has recognised that the right to truth is not only pertinent to the victims but also serves the public interest, emphasising the societal need to know about past abuses to prevent future violations.

However, the ECtHR approach has been characterised as somewhat cautious and timid, with limited explicit recognition of the right to truth compared to the IACtHR.

The right to truth remains a complex and evolving concept within the ECtHR, often intertwined with the procedural obligations to investigate and provide remedies for victims. The ECtHR's decisions have illustrated a gradual acknowledgment of this right, albeit with some inconsistencies and a tendency to prioritise procedural aspects over a more autonomous interpretation of the right to truth.

Another Court that explicitly recognised the right to truth in its rulings based on the provisions of the ECHR was the Human Rights Chamber for Bosnia and Herzegovina. In the Srebrenica case, for example, it was deemed that a violation of the right to the truth about the fate and whereabouts of 7,500 missing men and boys had occurred, based on violations of the prohibition of torture, the right to family life, and the State's duty to investigate (Bosnia and Herzegovina: Human Rights Chamber 2003; Groome 2011).

While the courts helped to improve the consistency and scope of the right to truth, this right became the subject of numerous academic studies (Naqvi 2006; Naftali 2016; Osmo 2014). It was argued that this right seemed applicable to many different kinds of cases and disputes, raising questions about its true nature. While it was originally understood as a right relating to disappearances and aimed at clarifying what happened to the victims, its scope expanded to encompass prosecutions, truth-seeking mechanisms, archival preservation, and witness protection.

The introduction of the right to truth in the ICED was in that regard very important to crystallise one of the facets of this right, making it binding. The Convention articulated the need for States to provide information about the circumstances of disappearances and the fate of victims, thus formalising the right to truth within an international framework.

The process of including the right to truth in the ICED was a lengthy and complex endeavour influenced by various factors, which included the experiences of victims, international human rights organisations, and political negotiations among States (Tayler 2001). During the drafting process, some challenges arose, particularly related to amnesty laws and the need for balancing the right to information with privacy concerns. Some delegations supported the need for amnesties in the context of national reconciliation, which conflicted with the views of human rights advocates who wanted to prohibit them entirely (UNCHR 2003).

Despite the controversies, the ICED, adopted in 2006, became the first international binding instrument to explicitly recognise the right to truth.

Article 24 of the ICED outlines the right of victims to know the truth about the circumstances of enforced disappearances, the progress and results of investigations, and the fate of disappeared persons.

The inclusion of the right to truth in the ICED is considered an important development in international human rights law. The concept of the right to truth highlights a commitment to accountability and justice following human rights abuses, as it has progressed from an abstract principle to a legally binding norm.

### **3. The right to truth in Brazil: Between advances and insufficiencies**

The right to truth in Brazil emerges in response to the atrocities committed during the military dictatorship in the country (1964–85). This is part of the ongoing efforts of relatives and victims to obtain information about human rights violations and to address issues of impunity. Groups like Torture Never Again in Rio de Janeiro and the project Brazil: Never Again in São Paulo are examples of this continuous mobilisation.

In Brazil, the number of those affected by political repression is still far from complete. According to a survey by the Special Commission on Political Deaths and Disappearances, it is known that at least 50,000 people were arrested in the first months of the military dictatorship alone and around 20,000 Brazilians were subjected to torture sessions (Comissão da Verdade da PUC-SP n.d.). In 2011, the Brazilian National Truth Commission concluded that 191 Brazilians who resisted the dictatorship were killed, 210 are still missing, and only 33 bodies have been located, making a total of 434 dead and missing activists (Comissão da Verdade da PUC-SP n.d.).

The process of uncovering the truth about the dictatorship's abuses, including their investigation and the condemnation of those responsible, has generally been challenging in Brazil. It remains incomplete and faces significant political resistance. To some authors, after the promulgation of the 1988 Constitution, and during most of the time, the right to truth in Brazil was fragile due to two main reasons: the secrecy imposed on documents containing information on human right violations which occurred during the dictatorship; and the Amnesty Law, which is valid until today (Pinheiro 2023; Torelly 2010). While this law prevents the cases from being investigated, it therefore blocks the knowledge of truth.

According to Juan Mendez and Francisco Bariff (2012), the aim of the truth telling process is to answer why did it happen, what really happened, and who is directly and indirectly responsible. To achieve this goal, it is necessary from the States to take positive actions by undertaking a sustained and systematic effort to investigate and accumulate evidence. It requires not only a great amount of attention, but also investments in

human resources. This is the reason why the access to public records, despite playing a crucial role in clarifying past facts, is not enough to fulfil entirely the right to the truth. Investigations are therefore mandatory.

In the Brazilian context, the complementarity between the access to official documents and investigations carried out by the State assumes an important role due to the fact that investigations are, *a priori*, not possible to be carried out, as the 1979 Amnesty Law is still valid. It means that a *lot of truth* will necessary be left out of the families and victims' knowledge, not to mention the limitation on their right to justice. For this reason, when defining the right to truth within the scope of the ACHR, the IACHR and the IACtHR consider the duty of States to investigate human rights violations.

This article will not explain in short detail what the Brazilian Amnesty Law consists of, and the story behind it, as it has been exhaustively dealt with the literature (Viégas and Vechia 2024; Schneider 2011; Parra and Miahle 2012; Piovesan 2009). Still, based on the relation between the duty to investigate and the right to truth, it is important to make few notes about this law, especially considering at the time it was promulgated, it had indeed a positive effect. It benefited 100 political prisoners and 150 banished individuals. Around 2,000 Brazilians were able to return to their country from exile (Comissão da Verdade da PUC-SP n.d.). On the other hand, the law provided that all military personnel who had committed abuses in the name of the State since the 1964 coup, including torture and the execution of opponents of the dictatorship were pardoned. The Amnesty Law is what gives them security that they will never be punished or even investigated. In 2008, the Brazilian Supreme Court ruled, in response to an action filed by the Brazilian Bar Association, that the Amnesty Law is compatible with the 1988 democratic Constitution (Viégas and Vechia 2024). The judiciary deemed it essential to transcend past events, proposing access to official documents as a potential measure for addressing historical issues (Schneider 2011).

The access to historical documents, however, was also difficult due to the secrecy imposed on them. The Law on Access of Information in Brazil, until 2012, allowed the Presidency to keep documents in infinite secrecy (Law No. 8.159 1991; Law No. 11.111 2005). According to the Brazilian literature on the topic, that was not even the worst problem faced to have access to historical documents concerning the dictatorship, but the lack of regulation on behalf of the legislature (Rodrigues 2014; Perlingeiro 2015). The laws just reproduced the right to access of information, along with the right to intimacy, private life, honour and image, without clarifying and defying how they relate, and most importantly how one could restrict the other.

It was only in 2010, the year in which Brazil ratified the ICED, that these obstacles in implementing the right to truth in Brazil began to be

positively mobilised, due to the IACtHR decision in the case of *Gomes Lund and Others v. Brazil* (also known as the *Guerrilha do Araguaia* case). This case is about the forced disappearance and execution of dozens of communist guerrillas in the Brazilian State of Paraná during the dictatorship.

The case gave the IACtHR the chance to address several issues, including enforced disappearances as continuing violations of human rights, validity of amnesty laws, and the right to truth, historical record, and recovery of bodies for burial. The Court emphasised that “thirty-eight years after the disappearances, only the remains of two bodies had been identified, and State still had not provided information regarding the location of the remaining sixty victims” (para. 121). As a result, it condemned Brazil responsible for the enforced disappearances, for violating its obligation to criminally investigate the events that occurred and punish those responsible, including the existence of the Amnesty Law, which does not comply with the obligation to adapt its domestic law to the ACHR, for violating the right to seek and receive information, the location of the remains, and access to official documentation on military operations in the Araguaia region, as well as the right to humane treatment to the detriment of the next of kin.

This decision was a turning point in the implementation of the right to truth in Brazil. Until this moment, there were few important achievements like the creation, in 1995, of a Special Commission on Deaths and the Disappearance of Political Persons, the creation of an Amnesty Commission in 2001, along with some measures of pecuniary reparation for the relatives of executed and disappeared victims (Law No. 10.875 2004. For a complete list, see Costa 2023; Gallo 2010; Borges 2015). After 2010, driven by the IACtHR’ sentence, two very determinants measures were implemented, namely the promulgation of a new law on access of information in 2012 (Law No. 12.527 2011) and the formation of a National Truth Commission.

From 2012 until 2014, the Truth Commission aimed to investigate human rights violations and to document the history of repression. It concluded that the serious human rights violations that took place during the period under investigation, especially during the 1964–85 dictatorship, were the result of widespread and systematic action by the State, constituting crimes against humanity (Comissão Nacional da Verdade 2022).

For Brazil, with a limited scope of measures aimed at implementing the right to truth, the role of the National Truth Commission becomes even more important. Critically, however, although truth commissions clarify collective abuses, they often fail to address individual cases. In the case of Brazil, for example, the relatives of disappeared victims were left without

almost any new information regarding the whereabouts of their loved ones. Nevertheless, these investigations did leave a legacy in the form of a report, which detailed numerous clandestine detention centres and the methods of torture employed on prisoners. In many ways, they exposed entire structures of institutionalised violence, and this written document remains as a historical record (Gallo 2015; Paula and Vieira 2020).

It is important to note that the Commission could only access the documents containing information on human rights violations due to the law on access of information that had been recently promulgated (Comissão Nacional da Verdade 2014). This Law provided, for the first time in Brazil, that access to information took precedence over the rights to privacy, private life, honour, and image in “a) actions aimed at recovering historical facts of the utmost importance; and b) information about conduct that implies human rights violations committed by public officials or at the behest of public authorities” (arts. 21 and 22). In addition to these new provisions, the Law also ended eternal secrecy.

On the other hand, even though the 2011 Law on Access of Information represented undeniable progress, in many cases it still authorises both secrecy and the classification of information as top secret, secret, or confidential. In addition, it also makes excessive use of fluid and difficult-to-define concepts, such as national defence and public safety (arts. 23-30), which may be inaccurately used to deny access to documents.

Until today, and considering that investigations are out of hand, one of the main challenges to really implement the right to truth in Brazil concerns these obstacles imposed on accessing official documents. Despite the Brazilian obligations under international law, many documents are arbitrarily classified as secret (Paula and Vieira 2020, 137). Many are also claimed by the military to have disappeared.

In the following pages, the current situation in the country, including the obstacle to access official documents, will be analysed, in an attempt to understand how far Brazil is from truly accomplishing the realisation of the right truth.

#### **4. Implementing the right to truth: The current situation in Brazil**

The creation of the National Truth Commission, along with the promulgation of a new law on access of information, marked two major steps in implementing the right to truth in Brazil. However, the conclusion of the Commission’s work coincided with a very unfavourable political context, i.e. with a breakdown of memory and truth policies, the spread of denialist discourse about the military dictatorship, and even official policies of forgetting (Schettini 2022). In a sense, this ultimately

demonstrated the various limitations of this mechanism of justice. When separated from the struggles of the present, especially during the Jair Bolsonaro administration, the legacy of the National Truth Commission seemed to be at real risk of being erased.

Institutionally, a series of mechanisms have been diminished, emptied, revoked, and even extinguished. Examples include the 2022 extinction of the Special Commission on Political Deaths and Disappearances, replacement of Amnesty Commission members with government-linked individuals, and denial of 95 percent of amnesty requests during his mandate. In 2019, the former President even decided to commemorate the 1964 military coup anniversary in the barracks.

These measures called the attention of the UN Working Group on Enforced or Involuntary Disappearance, who in 2024 addressed these changes in its General Allegations concerning Brazil. Several actions were requested, including the reinstatement of the Special Commission on Political Deaths and Disappearances, the implementation of the recommendations of the National Truth Commission, and the guarantee that the judiciary will not apply the amnesty law (UNHRC 2024).

To many advocates, victims, and their relatives, the return of Luiz Inácio Lula da Silva to the Presidency indicated a renewal of the Brazilian transitional process. Despite remarkable positive steps taken by President Lula's Government, like the reopening of the Special Commission on Political Deaths and Disappearances, the resumption of the work of the Amnesty Commission, the creation of instruments to monitor the final resolutions indicated by the National Truth Commission, and the prohibition to commemorate the military dictatorship's anniversary, the fact is that since the conclusion of the Truth Commission very little effort has been made to achieve justice and truth in Brazil. At the end of the Commissions mandate, for example, it presented 29 recommendations directed at the executive, legislative, and judiciary branches (Schincariol and Abreu 2023).

Until today, only three of these recommendations had been implemented,<sup>3</sup> including the repeal, in 2021, of the National Security Law (often known as "authoritarian rubble") and the operation, from 2015, of custody hearings, seen as an instrument to combat torture and illegal arrests.

The last recommendation fully implemented was the regulation of death certificate issuance for around 434 deceased and disappeared

3 In fact, some of the recommendations even suffered a setback. According to a report published by the Vladimir Herzog Institute, the implementation of the recommendations in 2023 reached its worse stage, since the conclusion of the Commission's work in 2014. By that time, seven recommendations (24 percent) had suffered a setback (Schincariol and Abreu 2023).

victims of the dictatorship identified by the Truth Commission. Now, almost four decades after the end of the dictatorship, some sense of closure and justice is being offered to the families of those deceased victims, as the death certificates must clearly provide that their relatives had passed due to violence committed by State members, and their supporters.

In regard to the other recommendations stipulated by the Truth Commission, it is worth noting that not even recommendation number one was fulfilled. It provides that the Armed Forces should “acknowledge their institutional responsibility for the occurrence of serious human rights violations during the military dictatorship.” This means that the Armed Forces have not, until today, recognised their role in the crimes committed during their regime (Menezes 2024).

Not recognising its responsibility for the violations committed during the dictatorship only reveals how strong is the military resistance to assume what happened through a lens that is not their own. This resistance is also what keeps official documents closed for the victims, society, and relatives, despite the advances of the Brazilian law on access to information. It is also what keeps relatives of disappeared victims without knowing until today what happened to their loved ones, and the location of their remains. It is too what sustains the validity of the Amnesty Law.

The questions that remain with this scenario in view concern what the possible achievements are in fulfilling the right to truth under such restricted reality, and what should change to allow the truth, which is still unaccessed, to be known.

Evidently, in the scope of this article, it will not be possible to address these issues in detail, but as previously explained above, the right to truth depends not only on accessing information, but also on investigations. With the Amnesty Law blocking the possibility to investigate the cases, the truth will have to be obtained through other kinds of measures. The judiciary has shown itself to be generally helpful to the relatives in actions filed before civil courts with the aim to request pecuniary compensation, or the recognition of the State responsibility (Osimo 2018). The access to official documents, however, may be difficult, as some authors point to the fact that a large number of dossiers are considered missing, destroyed, or have not yet been collected in official databases (Tenaglia 2024).

In regard to the possibility to pursue investigations, a new proposition in the Brazilian Supreme Court made the hopes again to rekindle. In the end of 2024, Judge Flavio Dino suggested the Court discuss whether the 1979 Amnesty Law can be applied to crimes that began during the military dictatorship, but whose effects continue to the present, i.e. the

so-called permanent crimes.<sup>4</sup> The judge stressed that the issue requires attention due to its legal complexity and historical relevance,<sup>5</sup> proposing that it be dealt with under the *general repercussion system*, which allows the Brazilian Supreme Court to define a binding understanding for lower courts (Migalhas 2024).

In his ruling, Judge Flavio Dino emphasised that the concealment of a corpse persists as long as the victim's location remains undisclosed. He clarified that because it is classified as a continuing offence, the act of concealing a corpse extends over time. Regarding the 1979 Amnesty Law, he noted that if an action continues over time, it remains ongoing even after the law's promulgation (Migalhas 2024). The matter here is not reviewing the Court's decision that recognised the constitutionality of the Amnesty Law, but to examine whether the Amnesty Law can be applied to cases that have ongoing effects, such as enforced disappearances.

Concluding that the 1979 Amnesty Law is inapplicable to these cases will constitute a significant advancement towards the implementation of truth and justice. It will facilitate the investigation of these crimes and, upon elucidation, potentially alleviate the profound anguish experienced by the families of the victims. Following decades of uncertainty regarding their relatives' whereabouts, this development may provide clarity on the events that transpired and, if applicable, the location of the victims' remains.

Thus, the current reality shows that progress has been made, even though changes in Government may eventually threaten it, but that the path to realising the right to truth in a way that satisfies the demands of victims, families, and even society in general still faces obstacles. Overcoming these obstacles requires, above all, the huge challenge to break with the culture of secrecy and confidentiality that still characterises Brazil, perpetuated by some sectors' resistance to recognise the abuses of the past regime.

## 5. Conclusion

The right to truth in Brazil exemplifies the complexities inherent in the process of elucidating gross human rights violations. In the film *I'm Still Here*, former politician Rubens Paiva is forcibly removed from his residence

4 This is a crime whose consummation extends over time, for as long as its effects last. Unlike instantaneous crimes, which end when the act is committed, permanent crimes continue until the situation created by the crime is ended. For example, in the case of corpse concealment, the crime persists as long as the body remains hidden, renewing the practice each time the concealment continues.

5 This proposal comes in the context of an appeal that discusses crimes that took place during the *Araguaia Guerrilla*, such as the murder committed by Lício Augusto Ribeiro Maciel and the concealment of a corpse committed by Sebastião Curió, both soldiers in the Brazilian Army.

in Rio de Janeiro by military personnel and never seen again. It was not until 25 years after his disappearance, in 1996, that his death certificate was finally issued, and only in January 2025 was the cause of his death entered in the certificate. The document now officially states that the cause of death of the politician was non-natural, violent, and perpetrated by the Brazilian State (Bernardino 2025). In the Brazilian Supreme Court, the family of the politician still waits for a decision on whether the 1979 Amnesty Law applies to his case.

Even with so many barriers, if the right to truth is still on the Brazilian agenda it is mostly due to the insistency of relatives, victims, and human rights organisations. The ongoing court cases and their persistent efforts to voice their concerns demonstrate the significant challenges in achieving the right to truth and justice in the country. As primary obstacles, it is possible to list a few, such as the number of archives that remain classified or were intentionally destroyed. Despite both the 1988 Constitution and the Law on Access to Information No. 12.527 (2011) providing for their public access, military institutions continue to deny historical documents to come to public attention.

Another obstacle faced in Brazil is the Supreme Court's decision on the 1979 Amnesty Law. To consider that the Amnesty Law also covers the military personnel who committed crimes during the dictatorship prevents the truth from being uncovered, as cases remain not investigated. It reflects, in fact, the political resistance in Brazil and its strength. The non-acceptance on the importance of the right to truth, either individually or collectively, by important governmental figures and State agents continue to represent a major difficulty in the country.

The future steps for implementing the right to truth in Brazil continue uncertain. Art, in this particular case the Brazilian cinema, may contribute to this process by drawing attention to the historical context surrounding the story. This could potentially increase awareness both internationally and domestically, among the general public and within political and official circles.

## References

- ACHR (American Convention on Human Rights). 1969. Pact of San Jose, Costa Rica. Signed 22 November 1969, effective 18 July 1978.
- Amnesty Commission. n.d. <https://www.gov.br/mdh/pt-br/navegue-por-temas/comissao-de-anistia> (last visited 6 July 2025)

- Bernardino, J. 2025. “Certidão de óbito de Rubens Paiva é corrigida e responsabiliza ditadura” CNN, January 24. <https://www.cnnbrasil.com.br/nacional/sudeste/sp/certidao-de-obito-de-rubens-paiva-e-corrigida-e-responsabiliza-ditadura/> (last visited 6 July 2025)
- Borges, Caroline Bastos de Paiva and Alci Marcus Ribeiro Borges. 2015. “O direito à memória e à verdade no Plano Nacional de Direitos Humanos III: um breve inventário.” *Revista Jurídica da Presidência* 17 (111): 151–72.
- Bosnia and Herzegovina: Human Rights Chamber for Bosnia and Herzegovina. 2003. Srebrenica Cases, Case No. CH/01/8365, et al., Decision on Admissibility and Merits, March 7, 2003.
- Comissão da Verdade da PUC-SP. (n.d.). “Mortos e Desaparecidos. Contextualização” <https://www.pucsp.br/comissaoдавerdade/mortos-e-desaparecidos-contextualizacao.html> (last visited 14 June 2025)
- Comissão Nacional da Verdade. 2014. “Relatório Final. Volume I” [https://cnv.memoriasreveladas.gov.br/images/pdf/relatorio/volume\\_1\\_digital.pdf](https://cnv.memoriasreveladas.gov.br/images/pdf/relatorio/volume_1_digital.pdf) (last visited 14 June 2025)
- Comissão Nacional da Verdade 2022. “The Final Reports of the Truth Commission” <https://www.gov.br/memoriasreveladas/pt-br/assuntos/comissoes-da-verdade/cnv> (last visited 6 July 2025)
- Constitution of the Federative Republic of Brazil. 1988.
- Costa, Caroline Rios. 2023. “A Corda Bamba e a Democracia Equilibrada: a Justiça de Transição à Brasileira e as Políticas de Reparação” *Veredas da História* 16, (1): 106–34.
- ECHR (European Convention on Human Rights). Convention for the Protection of Human Rights and Fundamental Freedoms. 1950.
- ECtHR (European Court of Human Rights). 1998. *Kurt v. Turkey*, Judgment of May 25, 1998.
- ECtHR (European Court of Human Rights). 2000. *Tast v. Turkey*, Judgment of November 14, 2000.
- ECtHR (European Court of Human Rights). 2002. *Orhan v. Turkey*, Judgment of June 18, 2002.
- ECtHR (European Court of Human Rights). 2006. *Bazorkinat v. Russia*, Judgment of July 27, 2006.
- ECtHR (European Court of Human Rights). 2012. *El-Masri v. The Former Yugoslav Republic of Macedonia*, Judgment of December 13, 2012.
- Gallo, Carlos Artur. 2010. “O Direito à Memória e à Verdade no Brasil Pós Ditadura Civil-Militar.” *Revista Brasileira de História e Ciências Sociais* 2 (4): 134–45.
- Groome, Dermot. 2010. “The Right to Truth in the Fight Against Impunity.” *Berkeley Journal of International Law* 29 (1): 175–99.
- IACHR (Inter-American Commission on Human Rights). 1986. Annual Report 1985-1986 OEA/Ser.LV/II.68, 26 September 1986, Chapter V.
- IACtHR (Inter-American Court of Human Rights). 1988. *Velasquez Rodriguez v. Honduras*. Series C n° 4, Judgment of July 29, 1988.
- IACtHR (Inter-American Court of Human Rights). 2000. *Bamaca Velasquez v. Guatemala*. Series C n° 70, Judgment of November 25, 2000.
- IACtHR (Inter-American Court of Human Rights). 2010. *Gomes Lund et al. (“Guerrilha do Araguaia”) v. Brazil*. Inter-American Court of Human Rights Series C No 219, 24 November 2010.
- ICED (International Convention for the Protection of All Persons from Enforced Disappearance). 2010. UN General Assembly Resolution 47/133 of 23 December 2010.

- Law No. 9.140. 1995.
- Law No. 8.159. 1991.
- Law No. 11.111. 2005.
- Law No. 10.875. 2004.
- Law No. 12.527. 2011.
- Méndez, Juan E. and Francisco J. Bariffi. 2012. "Truth, Right to, International Protection." *Max Planck Encyclopedia of Public International Law*. Heidelberg and Oxford University Press.
- Menezes, Emanuelle. 2024. "Brasil só cumpriu plenamente duas das 29 recomendações da Comissão Nacional da Verdade" SBT News, March 31. <https://sbtnews.sbt.com.br/noticia/brasil/brasil-so-cumpriu-plenamente-2-das-29-recomendacoes-da-comissao-nacional-da-verdade> (last visited 6 July 2025)
- Migalhas. 2024. "Dino propõe discussão da lei da anistia a 'crimes permanentes' na ditadura." December 16. <https://www.migalhas.com.br/quentes/421625/dino-propoe-discutir-lei-da-anistia-a-crimes-permanentes-na-ditadura> (last visited 6 July 2025)
- Naftali, Patricia. 2016. "Crafting a 'Right to Truth' in International Law: Converging Mobilizations, Diverging Agendas?" *Champ Pénal, Justice Pénale Internationale* Vol. XIII.
- Naqvi, Yasmin. 2006. "The Right to Truth in International Law: Fact or Fiction?" *International Review of the Red Cross* 88 (862): 245–73.
- 1988 Brazilian Constitution
- 1979 Brazilian Amnesty Law
- Osmo, Carla. 2014. *Direito à verdade: origens da conceituação e suas condições teóricas de possibilidade com base em reflexões de Hannah Arendt*. USP.
- Osmo, Carla. 2018. *A mobilização judicial dos direitos à verdade e reparação no Brasil: instrumento da sociedade civil para avanços na justiça de transição*. Centro Cultural de la Memoria Haroldo Conti. [http://conti.derhuman.jus.gov.ar/2018/03/seminario/mesa\\_2/osmo\\_mesa\\_2.pdf](http://conti.derhuman.jus.gov.ar/2018/03/seminario/mesa_2/osmo_mesa_2.pdf) (last visited 14 June 2025)
- Parra, Jorge-Barrientos and Mialhe Jorge Luis. 2012. "Lei de Anistia: Comentários à Sentença do Supremo Tribunal Federal no caso da ADPF 153." *Revista de Informação Legislativa* (194): 23–40.
- Paula, Celia Regina do Nascimento de, and Vieira, Fernando Antonio da Costa. 2020. "A Comissão da Verdade no Brasil: a luta pela memória em uma democracia fragilizada." *Revista Crítica de Ciências Sociais. Dossier Memória, Justiça e Poder: Desafios Contemporâneos*. (121): 123–46.
- Perlingeiro, Ricardo. 2015. "Garantias do Direito à Verdade e do Acesso à Informação na Justiça de Transição na América Latina." *Revista de Direito Constitucional e Internacional* 93 (23): 137–48.
- Pinheiro, Felipe. 2023. "A efetivação do direito à verdade e à memória no Brasil." Instituto Aurora, October 25. <https://institutoaurora.org/direito-a-verdade-e-a-memoria-no-brasil/> (last visited 12 June 2025)
- Piovesan, Flavia. 2009. "Direito Internacional dos Direitos Humanos e Lei de Anistia". *O Caso Brasileiro. Revista da Anistia Política e Justiça de Transição*. (2): 176–89.
- Protocol I. 1977. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. 1125 UNTS 3.
- Rodrigues, Vicente Arruda Camara. 2014. "Lenta, gradual e segura? A comissão nacional da verdade e a lei de acesso a informações na construção da justiça de transição no Brasil." *Acervo* 27 (1): 183–208.

- Schettini, Andrea. 2022. "O que resta da Comissão Nacional da Verdade? A política do tempo nas comissões da verdade." *Rev. Direito e Práx* 13 (3): 1424–51.
- Schincariol, Rafael L. F. C. and Gabrielle Oliveira de Abreu. 2023. "Report of the Vladimir Herzog Institut." Fortalecimento da Democracia.
- Schneider, Nina. 2011. "Impunity in Post-authoritarian Brazil: The Supreme Court's Recent Verdict in the Amnesty Law." *European Review of Latin American and Caribbean Studies* 90: 39–54.
- Taylor, Wilder. 2001. "Background to the Elaboration of the Draft International Convention for the Protection of All Persons from Forced Disappearance." *International Commission of Jurists* 62-63: 63–72.
- Tenaglia, Monica. 2024. "Comissões da Verdade e o Direito à Memória. Entrevista ao Instituto Humanitas Unisinos." September 13. <https://ihu.unisinos.br/categorias/159-entrevistas/643472-comissoes-da-verdade-e-o-direito-a-memoria-entrevista-especial-com-monica-tenaglia> (last visited 7 May 2025)
- Torelly, Marcelo D. 2010. *Justiça Transicional e Estado Constitucional de Direito: Perspectiva Teórica- Comparativa e Análise do Caso Brasileiro*. UNB. [https://repositorio.unb.br/bitstream/10482/8599/1/2010\\_MarceloDalmásTorelly.pdf](https://repositorio.unb.br/bitstream/10482/8599/1/2010_MarceloDalmásTorelly.pdf) (last visited 12 June 2025)
- UNCHR (United Nations Commission on Human Rights). 1997. Question of the Impunity of Perpetrators of Human Rights Violations. Final Report prepared by Mr. Joinet, Louis. Pursuant to Sub-Commission Decision. 1996/119. E/CN.4/SUB.2/1997/20.
- UNCHR (United Nations Commission on Human Rights). 2003. "Report of the Intersessional Open-Ended Working Group to Elaborate a Draft Legally Binding Normative Instrument for the Protection of all Persons From Enforced Disappearance." E/CN.4/2003/71.
- UN Human Rights Council. 2024. Working Group on Enforced or Involuntary Disappearance of Persons. 132 session, Annex II. General Allegations. A/HRC/WGEID/132/1.
- UNGA (United Nations General Assembly). 1975. Resolution 3450 (XXX).
- UNGA (United Nations General Assembly). 1977. Resolution 32/128.
- UNGA (United Nations General Assembly) 1978. Resolution 33/172.
- UNGA (United Nations General Assembly). 1980. Resolution 20 (XXXVI).
- Viégas, Diego Pereira and Renato da Silva Della Vechia. 2024. "Políticas de memória, verdade e justiça de transição: Análise da experiência brasileira." *Dilemas, Ver Estud Conflito Controle Soc* 17 (1): 1–24.