



National Truth Commission in Brazil: the Thread of History and the Right to Memory and Truth

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ABSTRACT

The article aims to problematize the issues of memory and Transitional Justice from the context of the establishment of the Brazilian National Truth Commission – (CNV, in Portuguese). The disputes about what to remember, how to remember, and what to forget (or not to forget) can become very complex in times of political polarization. By problematizing the Brazilian case between 2008 and 2014, we seek to highlight how the institution path of the CNV dealt with legislative and empirical obstacles around memory, history, forgetting, and resentment. Methodologically, the research used primary sources (legislative and judicial documents, reports, opinions) and secondary sources (specialized literature on the subject). Using the descriptive method, we present the Brazilian transitional context and the course of the CNV to demonstrate how the tension between resentment and the right to memory and the right to truth were organized by the Commission. While the outcome of the CNV Report is relevant, the accountability of human rights violators in Brazil is neutralized by the justice system. The promise of a public policy on memory remains in oblivion controlled by political elites.

Keywords: National Truth Commission; human rights; transitional justice; memory; amnesty.

Comisión de la verdad en Brasil: el entramado histórico y el derecho a la memoria y la verdad

RESUMEN

El artículo pretende problematizar las cuestiones de la memoria y la Justicia Transicional a partir del contexto de la creación de la Comisión Nacional de la Verdad de Brasil (CNV). Las disputas sobre qué recordar, cómo recordar y qué olvidar (o no olvidar) pueden llegar a ser muy complejas en tiempos de polarización política. Al problematizar el caso brasileño entre 2008 y 2014, buscamos destacar cómo la trayectoria institucional del CNV lidió con los obstáculos legislativos y empíricos en torno a la memoria, la historia, el olvido y el resentimiento. Para que estos objetivos pudieran cumplirse metodológicamente, la investigación utilizó fuentes primarias (documentos legislativos y judiciales, informes, dictámenes) y fuentes secundarias (bibliografía especializada en el tema). Utilizando el método descriptivo, presentamos el contexto transicional brasileño y el curso del CNV para demostrar cómo la tensión entre el resentimiento y el derecho a la memoria y el derecho a la verdad fueron organizados por la Comisión. Aunque el resultado del Informe del CNV es relevante, la responsabilidad de los violadores de los derechos humanos en Brasil está neutralizada por el sistema judicial. La promesa de una política pública sobre la memoria permanece en el olvido y controlada por las élites políticas.

Palabras clave: Comisión Nacional de la Verdad; Derechos Humanos; justicia transicional; memoria; amnistía.

Comissão Nacional da Verdade no Brasil: o fio da história e o direito à memória e à verdade

RESUMO

O artigo tem por objetivo problematizar os temas da memória e da Justiça de Transição a partir do contexto de instituição da Comissão Nacional da Verdade – CNV brasileira. As disputas sobre o que memorar, como recordar e o que esquecer (ou não esquecer) pode tornar-se muito complexo em tempos de polarização política. Ao problematizarmos o caso brasileiro entre 2008 e 2014, busca-se destacar como o percurso de instituição da CNV lidou com os entraves legislativos e empíricos em torno da memória, da história, do esquecimento e do ressentimento. Para que esses objetivos pudessem ser atendidos metodologicamente, a pesquisa utilizou fontes primárias (documentos legislativos e judiciais, relatórios, pareceres) e secundárias (literatura especializada sobre o tema). Com uso do método descritivo, apresentamos o contexto transicional brasileiro e o percurso da CNV para demonstrar como a tensão entre ressentimento e direito à memória e direito à verdade foram organizados pela Comissão. Embora o resultado do Relatório da CNV seja relevante, a responsabilização dos violadores de direitos humanos no Brasil é neutralizada pelo sistema de justiça. A promessa de uma política pública sobre memória permanece no esquecimento controlado pelas elites políticas.

Palavras-chave: Comissão Nacional da Verdade; Direitos Humanos; justiça de transição; memória; anistia.

INTRODUCTION

This article stems from the academic activity of the authors, who are interested in research in the area of Constitutional Law, encompassing the themes of justice and democracy in the context of Brazilian history. The researchers' investigation trajectories intersect to provide the present academic result, which consists of exploring the paths of the National Truth Commission in Brazil. The first version of this research was published in Portuguese in the *Culturas Jurídicas journal*, of the Federal University Fluminense – UFF (Brazil) in 2018.¹ The current version is a translation into English, with the goal of broadening the debate with other Latin-American scholars for transitional justice studies.

At the beginning of his work *Threads and Traces: True, False, Fictive*, the Italian author Carlo Ginzburg (2007) used the Greek myth of the minotaur to introduce his concerns about the work of the historian. The myth referred to Theseus's role, who was gifted with a ball of thread (or string, by some translations) by Ariadne. He used it to guide himself in the labyrinth and thus kill the minotaur.

Ginzburg's provocation is direct: "of the traces that Theseus left as he wandered through the labyrinth, the myth does not speak" (2007, p. 7). The metaphor used by the author can be understood from multiple perspectives. In fact, rescuing a past that cannot be accessed directly by people is as complex as revisiting the events and facts that mark a country's political-legal history. It is not always possible to uncover the traces left behind, especially when they are hidden or silenced by the actions of the State itself. However, as Ginzburg (2007) points out, it will always be necessary to connect the relationships between the thread – the thread of the story, which helps to orient the labyrinth of reality – and the tracks.

The transition from military dictatorship to democracy has moved around an almost insurmountable labyrinth: it has dragged on slowly, gradually, and surely, and after another 30 years, we are still dealing with the effects of a late but necessary transitional justice for the refinement of Brazilian democracy.

The purpose of this research was to examine the role played by Brazil's National Truth Commission (CNV, in Portuguese), focusing on its historical contribution through the memory recovery it is doing and how it reaches the citizenship dimension, which is reflected upon the political sphere, in terms of democratization, in the context of transitional justice.

The CNV's objective was to create other narratives that would allow, from the right to memory and truth, the reconnection between the thread of History and the traces left by the military dictatorship's legacy. The object of this research involves the study of memory and truth regarding the history of the country as a human right of

¹ See more in Cabral; Oliveira (2018).

every citizen, future generations, remaining witnesses, relatives and friends who have suffered from torture, disappearances, persecution, and lack of satisfactory responses from the State and official historical record of these events.

Based on the analysis of historical documents and the use of constitutional history methodology, the historical conditions that made the emergence of this commission possible were explored, as well as its attributions. It was then possible to evaluate the expectations surrounding its performance and the criticisms about how it emerged, being aware of the national and international importance of the historical discourse produced by this work of memory. Depending on how it is carried out, such work may give rise to resentments or reconciliations, hatred, peace, bitterness and/or forgiveness, (ir)responsibilities of the agents and the State, setbacks or advances in the process of democratization.

With that intention, authors who write about transitional justice, memory, and history, such as François Dosse, Jeanne Marie Gagnebin, Paul Ricoeur, Pierre Ansart, Michèle Ansart-Dourlen, and Gabriela da Rosa Bidniuk are cited. This paper also explores the national laws concerning the Truth Commission by analyzing documents, such as the Commission's regiment, the law that created the National Commission within the Presidency of the Republic's Cabinet, the law that grants amnesty in Brazil, the National Human Rights Program (PNDH-3), the Opinion of the Commission of Constitution, Justice & Citizenship of the Senate on the project to create the National Truth Commission, the Supreme Federal Court's (STF in Portuguese) decision on the Non-compliance Action of Fundamental Principle n. 135 (ADPF, in Portuguese), the decision of the Inter-American Court of Human Rights in the *Gomes Lund and others v. Brazil*, case (which refers to the Araguaia Guerrilla episode), in addition to the 1969 American Convention on Human Rights (also known as the "*Pact of San José*").

The first part of the paper performs a historical-normative contextualization of the Truth Commission in Brazil. The second part addresses the work of this Commission and its relations with the problems surrounding memory, history, forgetfulness, and resentment.

1. LEGAL-HISTORIC CONTEXTUALIZATION OF THE BRAZILIAN NATIONAL TRUTH COMMISSION

It is important to point out that the establishment of the National Truth Commission in Brazil, despite being achieved through the efforts of several social movements, whether institutionalized or not,² resulted much more from external and international pressure. This pressure was fomented more by internal representatives who dialogued with foreign associations than from a response to legitimate demands made more than 30 years

² We hereby refer to the Special Commission of the Dead and Disappeared, the Amnesty Commission, and the Truth Commissions at the regional, university, and human rights defense organizations level.

ago, which called for justice and truth in the process of transition³ from dictatorship to democracy in the country.

On the 24th of November 2010, the Inter-American Court of Human Rights (IACHR), in the case "Gomes Lund and Others (Araguaia Guerrilla) v. Brazil", sentenced the Brazilian State, by unanimously understanding that

Given its express non-compatibility with the American Convention, the provisions of the Brazilian Amnesty Law that impedes the investigation and punishment of serious human rights violations lack legal effect. As a consequence, they cannot continue to represent an obstacle in the investigation of the facts in the present case, nor for the identification and punishment of those responsible, nor can they have an equal or similar impact regarding other cases of serious human rights violations enshrined in the American Convention that occurred in Brazil. (IACHR 2010, p. 64)

In the Araguaia Guerrilla case, Brazil was found guilty of the forced disappearance and violation of the rights to the recognition of legal personality, life, integrity, and personal freedom of a list of individuals cited in the process.

The National Truth Commission was born to mitigate the harmful consequences of the Amnesty Law, not with punitive intentions, but to promote the investigation of events that, once cleared, could contribute to the identification of guilty parties, the discovery of important documents and the bodies of disappeared persons in times of political repression.

It is interesting to note that the Amnesty Law's (Lei n. 6.683/1979) reception by the constitutional system established by the 1988 Constitution of the Federative Republic of Brazil was not peaceful. The Non-Compliance Action of Fundamental Principle (ADPF), registered under number 153, filed before the country's Supreme Court on the 21 of August 2008, advocated for a Constitutional interpretation of the Amnesty Law. In that action, by questioning the validity of paragraph 1 of article 1 of the law aforementioned, the objective was to consecrate the thesis that the Amnesty granted for the practice of political or related crimes was not extended to common crimes committed by agents of repression against political opponents during the military regime (1964 to 1985).

As a state response, the Supreme Court dismissed the motion, by a majority, on the 29th of April 2010. However, the decision's syllabus included the following

³ Transitional Justice can be seen as "a peculiar process of countries that have gone through an regime of authoritarianism and human rights violations. In Brazil, thirty years after the beginning of the transitional justice process (counted from the 1979 edition of the Amnesty Law), the challenges and perspectives in achieving results more adequate to democratic values demand a greater involvement of society and of jurists, professionals and academics who work in defense of human rights. The coexistence of the Brazilian Democratic State with the authoritarian legacy without going through the stages of transitional justice does not lead the issue to oblivion, but rather to ignorance». In: Soares, I. V. P.; KISHI, S. A. S. (Coords.) (2009). *Memória e verdade: a justiça de transição no Estado Democrático brasileiro*. Fórum (no page). See more in Rojas (2018, for a different perspective in Latin America.

recommendation, without, however, granting it a normative character: "It is necessary to clear up the mechanisms that still make it difficult to know what happened in Brazil during the dark decades of the dictatorship" (Supremo Tribunal Federal, 2010, p. 49).⁴

The Court was keen to point out that the Amnesty Law is part of the constitutional order established in 1988 and, therefore, legitimized by the democratization process. In addition, the Supreme Court held that revisions of the Amnesty Law are the responsibility of the Legislative Branch and not the Judiciary. It also pointed out that:

The Amnesty Law conveys a political decision taken at the time - the moment of the reconciled transition of 1979. Law 6.683 is a measure, not a general rule for the future, endowed with abstraction and generality. It has to be interpreted considering the reality of the moment it was conquered. (Supremo Tribunal Federal, 2010, p. 49)⁵

The legal basis in the ADPF decision 153⁶ brought to light a political issue that, when legally answered, created doubts as to whether the "legal" treatment given to the "political" issue was adequate, especially when comparing the national decision to the definitive understanding of the Inter-American Court of Human Rights.

Assuming the various dimensions that emerge from the situation taken to the Judiciary, Minister Eros Grau, rapporteur of the case, said that the argument of the plaintiff (the Brazilian Bar Association – OAB, in Portuguese, through its Federal Council)⁷ – that the Amnesty Law resulted from an extreme disrespect to the human person – is an "exclusively political, not legal, argumentation that challenges history and time"⁸ and that the idea that the amnesty law served to cover up the impunity of official criminals acting in the name of the state was not fruitful (Supremo Tribunal Federal, 2010, p. 50).

It is crucial to take advantage of an excerpt from the vote of the aforementioned Minister, who presents what he understands as History, relating it to the subjects who make it and to the idea of the past:

The initiative ignores the perhaps most important moment in the country's struggle for re-democratization, that of the battle for Amnesty, an authentic battle. Everyone who knows our history knows that this political agreement existed, resulting in the text of Law 6.683/79. The search for the subjects of History leads to the

⁴ Unofficial translation. Original: "*Impõe-se o desembaraço dos mecanismos que ainda dificultam o conhecimento do quanto ocorreu no Brasil durante as décadas sombrias da ditadura*".

⁵ Unofficial translation. Original: "*A Lei da anistia veicula uma decisão política assumida no momento – o momento da transição conciliada de 1979. A Lei n. 6.683 é uma lei-medida, não uma regra geral para o futuro, dotada de abstração e generalidade. Há que ser interpretada a partir da realidade no momento em que foi conquistada*".

⁶ For more details, see Marques (2018) and Cabral (2017).

⁷ The Brazilian Bar Association's Federal Council had an important role in this constitutional time. However, its actions are, at times, contradictory. For another perspective, see Pereira (2017).

⁸ Unofficial translation. Original: "*argumentação exclusivamente política, não jurídica, argumentação que entra em testilhas com a História e com o tempo*".

incomprehension of History. It is expressive of an abstract vision, an intimate vision of History, which is not reduced to a static collection of facts disconnected from each other. Men can only do this within the material limits of reality. In order for them to be able to make history, they must be in a position to make it. It is there, in 18 Brumaire by Luís Bonaparte: 'Men make their own history, but they don't make it as they wish, they don't make it under circumstances of their choice, but under those they face directly, bequeathed and transmitted by the past. (Supremo Tribunal Federal, 2010, p. 25-26)

To exemplify that there was a struggle for Amnesty and, at the same time, that it resulted from an agreement with mutual renunciations, Minister Eros Grau highlighted a speech by Dalmo de Abreu Dallari, a jurist who reported that he suffered "imprisonment and kidnapping for the boldness of not compromising and not shutting up, of being committed to locating disappeared people, saving tortured people, releasing patriots victim of arbitrary imprisonment, and of always preaching democratic restoration" (Supremo Tribunal Federal, 2010, p. 28).⁹ In his manifestation, he stated that "it would be inevitable to accept limitations and admit that criminals participating in the government or protected by them would escape the punishment they deserved for justice" (Supremo Tribunal Federal, 2010, p. 28).¹⁰ However, according to him, it was convenient to accept this distortion for the benefit it would bring, even with the imposition of Amnesty in favor of anti-communist patriots' impunity and not just political prisoners exiles. From this, the «reciprocal amnesty» was born, with a bilateral, broad, and general character, but not unrestricted.

Assuming the Amnesty's conciliatory role as something legitimate, Eros Grau, in his vote, explained that this happened "because they were all acquitted, some absolving themselves". The Minister continued: "The subversives obtained amnesty because of that magnitude. It was to give in and survive or not give in and continue to live in anguish – in some cases, not living at all" (Supremo Tribunal Federal, 2010, p. 57).¹¹

Because the subjects of that transitional history were tired of violence (the rapporteur himself stated that the subjects of history should not be sought, but he does so himself), Minister Eros Grau understood that concessions were necessary and changing the rules of Amnesty meant changing history, which he expressed in his rhetorical questioning: "What do you want now, in this attempt, if not more than rewriting – to reconstruct history?" (Supremo Tribunal Federal, 2010, p. 33).

Eros Grau's questioning takes us back to an unprecedented difficulty, as he ends up clinging to a narrative that intends to be a single expression of history. To

⁹ Unofficial translation. Original: "*prisão e sequestro pela ousadia de não transigir e não calar, empenhado em localizar desaparecidos, salvar torturados, libertar patriotas vítimas de prisão arbitrária, pregando sempre a restauração democrática*".

¹⁰ Unofficial translation. Original: "*seria inevitável aceitar limitações e admitir que criminosos participantes do governo ou protegidos por eles escapassem da punição que mereciam por justiça*".

¹¹ Unofficial translation. Original: "*O que se deseja agora, em uma tentativa, mais do que reescrever, de reconstruir a História?*".

understand Amnesty as a political agreement that goes beyond the spheres of a new constitutional order is to assume the prior existence of a harmonious composition between the parties in conflict.

The desire for Amnesty as a turning point for the military regime does not mean imposing oblivion or amnesia for gross violations of human rights, especially for the immediate effect of self-amnesty on crimes related to political crimes.¹² As argued by Paulo Abrão (2012), the meaning of Amnesty in times of re-democratization tends to "be understood as a memory" (p. XX).

The Supreme Court decision, although it may be considered by constitutional doctrine as a final decision, has not proved to be the best narrative about our historical past.

From these positions, it can already be expressed that the action of a truth commission, which results from a legislative creation, born in this context, has the purpose, if not explicit, through the work of memory recovery, to create a fold in History. This fold is increased (adulterated and/or recovered) by other versions on the facts, beyond the official consecrated narrative, or by the discovery/reconstruction of new facts, without neglecting that the commission's very discourse is, in itself, a fact, a historical event.

This exercise in memory recovery does not fail to show dissatisfaction with Amnesty's rules, a democratic desire to affirm that they did not want (sincerely, only some did) it to have been as it was: the future changing the past by the possibility of the present. The historical "rescue" by remembrance is almost a duty of memory that brings the past to the present as a realization of justice, helping to conclude a transition interrupted by circumstances. If not resumed, such transition risks generating a dangerous forgetfulness and the permanence of a severe stench of political intolerance in a "full" democracy (always an ideal – democratization is a better way of putting it).

What the judicial system highlighted in the ADPF 153 decision is that Amnesty is a political issue, and the STF cannot review legislative acts on this matter, as well as it is not up to the Supreme Court to judge its fairness or lack thereof in light of the historical moment that demanded a conciliatory measure of that nature.

Therefore, this reasoning is diametrically opposed to that of the Inter-American Court of Human Rights (IACHR), when the matter is Amnesty. Even in the introduction of the IACHR's sentence on the Araguaia Guerrilla case, it remains clear why the case was submitted to the jurisdiction of the Court since it represented:

an important opportunity for the Court to consolidate the Inter-American jurisprudence on amnesty laws in relation to enforced disappearances and extrajudicial executions, and the State's consequential obligation to provide society with the truth, investigate, prosecute, and punish serious human rights violations. Likewise, the

¹² For more details, see Acunha and Benvindo (2012).

Commission emphasized the historical value of the case and the possibility that the Court could affirm the non-compatibility, of not only the amnesty laws, but also of the laws on confidentiality of documents with the American Convention. (IACHR, 2010, p. 3)

In its defense, the State (Brazil), a party in the proceedings before the IACHR, claimed that the (criminal) punishment of political criminals was not accepted by the Supreme Court, as decided by ADPF 153, thus questioning the competence of the IACHR to review decisions of the Brazilian Supreme Court. In counterpoint, the opposing party (composed of representatives of those politically persecuted) argued that:

on the other hand, the representatives argued that the decision of the Supreme Court, in granting amnesty to the agents of the repression that committed crimes against humanity, objectively prevents the search for justice and access to the truth sought by the victims. (IACHR, 2010, p. 19)

In its decision, the IACHR understood that the action's goal was not to review the "STF's decision, but rather to investigate whether Brazil violated specific international obligations enshrined in the various rules of the American Convention to the detriment of the alleged victims", intending to guarantee "the right to judicial protection, and the judicial guarantees so as to ascertain the facts and determine the individual responsibilities of said facts", according to the American Convention,¹³ which must conform to the norms and practices of member states (IACHR, 2010, p. 20).

In this case, it was a question of analyzing the Brazilian Amnesty Law and its (in) compatibility with the American Convention (whose conventionality is made by the IACHR).

The judicial sentence content is relevant to synthesize and clarify this point:

Nevertheless, the parties disagree in regard to the international obligations of the State derived from the American Convention on Human Rights ratified by Brazil in 1992, and that, in turn recognized the contentious jurisdiction of this Court in 1998. As such, the issue that the Inter-American Court must resolve in the present case is whether the Amnesty Law, approved in 1979, is compatible with the rights enshrined in Articles 1(1), 2,169 8(1), 170 and 25171 of the American Convention, or in other words, if it can maintain its legal effects once the State became internationally obligated as of ratification of the American. (IACHR 2010, p. 47)

This suit had great repercussions, as the Brazilian State maintained in the process that the search for missing persons and the investigation of those responsible for disappearances were paralyzed by the effects of the Amnesty Law, forbidding not

¹³ The American Convention on Human Rights (also known as the «Pact of San José») was adopted in San Jose, Costa Rica, under the Organization of American States (OAS) on November 22, 1969 and became valid internationally on July 18, 1978. Brazil joined on July 9, 1992, and ratified it on September 25, 1992, through Decree No. 678/1992, which took effect in the national territory on November 6, 1992, legally welcoming the rights and guarantees provided therein.

only criminal sanctions but also hindering the right to clarify the facts, thus denying answers to the families and society. According to the Convention, it is not enough to simply make reparations to the victim's relatives, but it is also necessary to elucidate the truth and punish the guilty. To not do it would be, by the international agreement, unpardonable (for amnesty aspects), as well as unspeakable (IACHR, 2010).

Opposing this idea, the Brazilian Amnesty Law assumed impunity, generalizing even for crimes only related to those committed by state agents. The International Court understands that

The Amnesty Law was not the result of a process of balanced negotiation, given that its content did not consider the positions and necessities demanded by its consignees and next of kin. As such, to attribute consent to the Amnesty for the repression of the agents of the campaign and the next of kin of the disappeared is to deform history. (IACHR, 2010, p. 48)

Therefore, what should be obtained by resuming investigations, such as those carried out by a truth commission is the production of new narratives (by following new threads of stories) from the trails left by the experiences that violated human rights and, consequently, defend the rule of law.

In general, Amnesty is justified in this way to avoid the perpetuation of hostilities, allowing a real transition for the political society to a regime of freedom without an environment of mistrust, rivalry, and revanchism among national groups.¹⁴ In order to bring a sense of justice and peace, other options than criminal punishment are sought, such as compensation for the property of victims and families, and the reports and actions of truth commissions, enabling reflections on the right to memory and truth.

For the IACHR (2010), what happened in Brazil was illegitimate under international law, since the 1979 Amnesty Law based the state's inertia in investigating, prosecuting, and penalizing those responsible for human rights violations committed during the military regime because it understands that the application of this law automatically absolves all violations that have been perpetrated by agents of political repression. Confirming this, as seen above, on the 29 of April 2010, the STF declared the dismissal of ADPF 153, attesting the Amnesty Law's effectiveness and the constitutionality of the interpretation of article 1, paragraph 1.

However, the IACHR finds resonance in favor of Brazil:

The obligation to investigate, and where applicable, punish the serious violations of human rights have been affirmed by all of the international systems for the protection of human rights. In the universal system, the United Nations Human Rights Committee established in its first cases that States must investigate, in good faith, violations to the International Covenant on Civil and Political

¹⁴ It is factually correct that amnesty has been used in Brazil for many ends and has taken dramatic turns in constitutional history. For examples on this, see Paixão (2015) and Marques (2017).

Rights. Subsequently, it considered in its constant jurisprudence that the criminal investigation and the ensuing prosecution are corrective measures that are necessary for violations of human rights. In particular, in cases of enforced disappearance, the Committee concluded that States must establish that which has occurred to the disappeared victims and bring justice to those responsible. (IACHR, 2010, p. 53)

In the European and African systems, there is a similar understanding:

For its part, in the European System, the European Court of Human Rights has considered that in cases of violations to the right to life or to personal integrity, the idea of an 'effective remedy' implies, in addition to the payment in compensation, where applicable, and without detriment to any other available remedy in the national system, the obligation of the respondent State to carry out an exhaustive and effective investigation, which allows for the identification and punishment of those responsible, as well as the effective access for the petitioner in the investigation procedures [...]. In the same sense, in the African System, the African Commission on Human and Peoples' Rights, has sustained that offering total and complete immunity against the processing and prosecution of human rights violations, as well as the lack of adoption of measures that guarantee that the perpetrators of these violations be punished and that the victims be duly compensated, does not only prevent individuals from obtaining a remedy for the violations, denying them their right to an effective remedy, but also promotes impunity and constitutes a violation of the international obligation of States. (IACHR, 2010, p. 54)

Thus, we understand that Amnesty cannot prevent the search for truth, memory, and justice. The establishment of an effective truth commission, with mechanisms for the material reparation of victims and their families and an investigation system, prosecuting and punishing the culprits identified for committing crimes against human rights, becomes fundamental for realizing the stages of transitional justice. The Inter-American Court of Human Rights, the Inter-American Commission on Human Rights, the United Nations' organs, and other universal and regional human rights protection bodies share this position: the incompatibility of amnesty laws with international law and the international obligations of states when applied to severe human rights violations (Reis, 2019).

In the IACHR's decision in the case of the Araguaia Guerrilla, several countries were mentioned for having their amnesty and pardon laws considered incompatible by the most diverse international bodies and supreme courts (Chile, Peru, Uruguay, Colombia Sierra Leone, Yugoslavia, Argentina, Haiti, El Salvador, among others) when faced with serious harm to human rights and the norms of international law (IACHR, 2010).

The IACHR (2010) also made it clear that the incompatibility of the Brazilian Amnesty Law with the American Convention is independent of whether it was a "self-amnesty" or a political agreement. The formal aspect is not the most important in the face of the injury to the material content of the rights, considering the essence of the humanitarian

norms was harmed, so the STF, in ADPF 153, should have conformed its decision to international jurisprudence, especially that of the IACHR, since before the decision in the Araguaia Guerrilla case, to which the Brazilian State submits itself.

In the resolution points of the sentence on the aforementioned Guerrilla case, the IACHR declared that the Brazilian Amnesty Law is incompatible with the Convention and should not have legal effects, nor should it represent an obstacle to the investigation of the facts, identification, and punishment of those responsible.

This conviction of Brazil was the determining factor for creating the National Truth Commission, through Law No. 12,528, on the 18 of November 2011. However, the terms under which the National Truth Commission was engendered were far from taking into account the IACHR's decision, which resolved that "the State must effectively conduct a criminal investigation of the facts of the present case", determining "the corresponding criminal responsibility, and the effectively apply the punishment and consequences provided by law", observing the following: investigation, trial and eventual punishment of those responsible, including those who were criminally responsible, within a reasonable time, taking into account the pattern of human rights violations:

the State may not apply the Amnesty Law to the benefit of the perpetrators, as well as other analogous provisions, the statute of limitations, non-retroactivity of the criminal law, *res judicata*, *ne bis in idem*, or any other similar exception that excuses responsibility of this obligation [...]. (IACHR 2010, p. 95)

The Inter-American Court also very clearly stated that, in criminal cases, "the State must guarantee that the criminal cases initiated due to the facts of the present case against the alleged perpetrators who were or are military officials, be carried out within the ordinary jurisdiction and not within the military jurisdiction" (IACHR, 2010, p. 95).

As a technique for overseeing whether the decision is complied with, the sentence states that:

The Court will monitor the full compliance with this Judgment, in the exercise of its attributions and in compliance with its obligations pursuant to the American Convention on Human Rights, and will conclude the present case once the State has entirely satisfied the dispositions herein. In a period of one year as of the notification of this Judgment, the State must offer the Court a brief regarding the measures adopted to satisfy compliance. (IACHR, 2010, p. 115)

However, as article 4, paragraph 4 of Law No. 12,528/2011, which created the National Truth Commission, provided that "The National Truth Commission's activities

will not have a jurisdictional or persecutory character”,¹⁵ this Commission did not have the role of fulfilling the sentence.

Could the performance of the CNV, in addition to a work of memory recovery, be considered a primary investigation phase for possible future criminal charges, in case of identification of those guilty of crimes of human injury, before the common jurisdiction? In practice, this was not the case, even though its final report, released in December 2014, subsidized some criminal actions promoted by the Federal Public Prosecutor’s Office¹⁶ against human rights perpetrators.¹⁷

The absence of a punitive nature in the CNV was thought out consciously, as can be seen from the opinion of the Constitution and Justice Commission (CCJ, in Portuguese) of the Senate, which analyzed the bill to create the aforementioned National Truth Commission after approval by the Congress’ Chamber of Deputies.

It is imperative to note, before analyzing the opinion of the Senate’s CCJ, that the sentence of the IACHR, the supreme body of international jurisdiction in human rights matters within the OAS, when referring to a Truth Commission, considered it “an important mechanism, among other things, to fulfill the State’s obligation to guarantee the right to know the truth about what happened”. Moreover, the Court valued “the initiative to create the National Truth Commission and urged the State to implement it”, following some criteria, but without replacing, with that memory recovery work, the duty of the State “to establish the truth and ensure the judicial determination of individual responsibilities through criminal judicial proceedings.” (IACHR, 2010, pp. 106-107).

After the IACHR’s decision, to leave no doubt, the *ad hoc* judge Roberto de Figueiredo Caldas clarified that Brazil was found guilty for, among other reasons, having applied the Amnesty Law as an obstacle to the investigation, trial, and punishment of crimes, for the ineffectiveness of non-criminal lawsuits and the lack of access to justice, truth and information (IACHR, 2010).

Furthermore, the judge stated that crimes against humanity were committed in the convicted country (Brazilian State), a fact that was not denied by Brazil. For this reason, accountability, including criminal liability, cannot be hindered “by the passage of time, such as prescription, or by normative amnesty provisions” (IACHR, 2010, p. 49).

¹⁵ Unofficial translation. Original: “As atividades da Comissão Nacional da Verdade não terão caráter jurisdicional ou persecutório”.

¹⁶ The Federal Public Ministry is an essential institution in Justice, and aims to promote the defense of social rights and unavailable individuals, the legal order and the democratic regime. The MPF has functional independence and is not linked to the Executive, Legislative and Judiciary Powers

¹⁷ The legal actions did not go ahead due to a decision by the Federal Regional Court which applied ADPF n. 153 as a precedent. The understanding forbade the criminal persecution of crimes covered by the Amnesty Law of 1979. For a more detailed consultation, see the technical report issued by the Federal Public Ministry in 2017 (Brasil, 2017). Of all 26 cases, none had an adequate resolution.

In his conclusion, Roberto de Figueiredo Caldas states:

Finally, it is wise to remember that the international jurisprudence, customs, and doctrine establish that no law or rule of law, such as provisions of an amnesty, the statute of limitations, and other exclusionary punishments, should prevent a State from meeting its inalienable obligation to punish crimes against-humanity, because they are insurmountable in the existence of an assaulted individual, in the memories of the components of their social circle, and in the transmissions for generations of all humanity. (IACHR, 2010, p. 47)

Therefore, the law that created the National Truth Commission did not fulfill the IACHR's sentence since the CNV does not play a jurisdictional or persecutory role, but only an informative and investigative one. On the other hand, the law's rationale simulated (even if indirectly) the fulfillment of the decision mentioned above, not taking the opportunity to revise or revoke, even partially, the Brazilian Amnesty Law.

Thus, just as the 1979 Amnesty Law would have harmed the Pact of San José, according to international jurisprudence, Law no. 12.528/2011, which created the CNV, by extracting punitive powers from this Commission and not repealing the Amnesty Law, but reinforcing its applicability, in art. 6, was already born unconventional (contrary to the American Convention, which is the constitution of the international order and that Brazil, sovereignly and spontaneously, ratified).

As is well known, domestic law should be adapted to the Convention and not the other way around.¹⁸ Consequently, up to the present moment, Brazil has defaulted on complying with the IACHR's sentence and may have created an illusion, before the international and national community, that politicians were interested in revolving the basements of the country's dictatorial history – this would be the case only if it was accompanied by measures to hold the guilty parties accountable.

The National Congress (Chamber of Deputies and Senate) was negligent and condescending, instead of being proactive and attending to the international order, in modifying the Amnesty Law in its effects that prevent the punishment of anti-humanitarian criminals.

The Constitution, Justice and Citizenship Commission (CCJ, in Portuguese) of the Senate concerning Congressional Bill (PLC, in Portuguese) No. 88 of 2011 (No. 7. 376,

¹⁸ For that reason, Brazil was found guilty in the Guerrilla case under the following terms: "The State has not complied with its obligation to adapt its domestic law to the American Convention on Human Rights, pursuant to Article 2, in relation to Articles 8(1), 25, and 1(1) thereof, as a consequence of the interpretation and application given to the Amnesty Law in cases of serious violations of human rights. Likewise, the State is responsible for the violation of the rights to fair trial [judicial guarantees] and judicial protection enshrined in Articles 8(1) and 25(1) of the American Convention on Human Rights, in relation to Articles 1(1) and 2 of said instrument, for failure to investigate the facts of the present case, prosecute, and punish those responsible, to the detriment of next of kin of the disappeared persons and the executed person indicated in paragraphs 180 and 181 of the present Judgment, in the terms of paragraphs 137 to 182 thereof". (Iachr, 2010, p. 113).

2010, originally), authored by the Executive Branch, after approval in the Chamber of Deputies, to create the National Truth Commission (CNV, in Portuguese) within the Presidency of the Republic's Cabinet elaborated the Opinion of the 19th of October 2011. It registered that this legislative proposal aimed to implement the CNV to examine and clarify the gross human rights violations committed between the 18th of September 1946 and the 5th of October of 1988. It also aimed to make effective the right to memory and historical truth and promote national reconciliation within two years of activities.

In the Opinion's text, it was made a point of agreeing with the project, which foresaw that "the activities of the Commission will not have a jurisdictional or persecutory character". Also, the Opinion expressed that investigating within two years the criminal practices of a period of forty-two years, "with a structure considered small, may lead to the mistaken conclusion of early failure of the National Truth Commission". Nevertheless, according to the rapporteur, this was not so since the CNV would take a "distinct and complementary step to what has already been accomplished" because "it cannot make reparations or punish, but must build a historical narrative around serious human rights violations" (Senado Federal, 2011, p. 9)¹⁹.

This statement was made as if there had been several punitive proceedings against all political criminal agents, and now it was just about clarifying the facts. However, the Opinion refers to other commissions that have already done memory recovery work and information gathering like the CNV.

The rapporteur of the Opinion, Senator Aloysio Nunes Ferreira, said that the Commission should, at the end of the two years, expose "the conclusion of its work, which will be showcased in the presentation of a report with the activities carried out, the facts examined, the conclusions and recommendations" (Senado Federal, 2011, p. 3),²⁰ and the entire collection would be sent to the National Archive to be part of the Memories Revealed Project.

The aforementioned Senator expressed his awareness that Brazilian society had been supported by transitional legislation for more than a decade, but many "atrocities remain shrouded in mystery, and the undertaken investigations have come up against obstacles that have frustrated their objective" (Senado Federal, 2011, p. 10)²¹.

However, when it came to the real objective of the CNV, there was a retreat concerning the punitive accountability of those responsible for the atrocities, understanding

¹⁹ Unofficial translation. Original: "*as atividades da Comissão não terão caráter jurisdicional ou persecutório [...] com estrutura considerada pequena, pode induzir à conclusão equivocada de malogro antecipado da Comissão Nacional da Verdade [...] [daria um] passo distinto e complementar ao que já foi realizado [...] [pois] não pode indenizar nem punir, mas deve construir narrativa histórica em torno de graves violações de direitos humanos*".

²⁰ Unofficial translation. Original: "*a conclusão de seus trabalhos, que importará na apresentação de relatório com atividades realizadas, fatos examinados, conclusões e recomendações*".

²¹ Unofficial translation. Original: "*atrocidades permanecem envoltas em mistério e as investigações empreendidas esbararam em obstáculos que frustraram seu objetivo*".

that the challenge was only «to bring to light what is covered up» because the “Commission will be based on building the collective memory, ensuring that the facts are not repeated, and consolidating our democracy”, working articulately with the Amnesty Commission (Senado Federal, 2011, p. 10)²².

It is interesting to note that international jurisprudence generated by cases of Latin-American countries that had pro-amnesty commissions for human rights violations determined that states should carry out the investigation and punishment of the guilty, departing from the pro-amnesty norms. The Opinion did not report this, but the IACHR’s sentence on the Araguaia Guerrilla case was clear.

Choosing the case of Ghana to justify that the CNV will “respect the Amnesty Law”, a decision considered an affront to the international jurisdiction to which Brazil chose to submit to by sovereign decision, the Opinion of the Senate CCJ explained that:

With the exception of the implementation of the aforementioned sentence of the Inter-American Court of Human Rights, the effectiveness of the Amnesty Law is recognized by PLC No. 88, 2011, and by recent jurisprudence of the Federal Supreme Court, in the aforementioned ADPF judgment No. 153. (Senado Federal, 2011, p. 16)²³

As the Supreme Court understood that it was up to the Legislative branch to amend or not amend laws of a political nature, such as the 1979 Amnesty Law, legislators confirmed an understanding contrary to the international order – when they should actually conform to it.

Deliberately, the Legislative, when provoked by the bill initiative of the Executive, aware of the decision of ADPF 153 and its rejection by the Inter-American Court of Human Rights, in the case of the Araguaia Guerrilla, made an explicit point of confirming the validity of the Amnesty Law, as expressed in art. 6 of Law no. 12.528/11, which created the CNV.

The opinion then established the so-called «blame game» between the Legislative and the Judiciary, since the latter decided that it was up to the Legislative to review the Amnesty Law. The Senator expressed that “the Truth Commission is not intended to replace the criminal sphere, but it should be emphasized that, before it, it maintains independence” and that “the responsibility for analyzing the Amnesty Law or requests not contemplated for compensation lies with the Judiciary, as it has been done, including by the Federal Supreme Court (STF)” (Senado Federal, 2011, p. 13)²⁴.

²² Unofficial translation. Original: “*responsabilização punitiva dos culpados pelas atrocidades, entendendo que o desafio era somente que venha à luz aquilo que está encoberto [...] [pois] Comissão assentar-se-á sobre a construção da memória coletiva, a garantia de não repetição dos fatos e a consolidação de nossa democracia*”.

²³ Unofficial translation. Original: “*Ressalvada a implementação da citada sentença da Corte Interamericana de Direitos Humanos, a vigência da Lei da Anistia é reconhecida pelo PLC nº 88, de 2011, e por jurisprudência recente do Supremo Tribunal Federal, no já mencionado julgamento da ADPF nº 153*”.

²⁴ Unofficial translation. Original: “*a Comissão da Verdade não tem por objetivo substituir a esfera penal, mas cumpre destacar que, diante dela, mantém independência*» e «*a responsabilidade de analisar a Lei de Anistia ou de pedidos não*

When a punitive demand eventually reaches the Supreme Court, and it does not review the understanding expressed in ADPF 153, it may be understood that it is up to the Legislative to review the political law of Amnesty, which prevents the processing and punishment of accused persons discovered by the memory recovery work of the CNV, for example. This impediment has already left 27 criminal actions "in the face of 47 state agents (military, police delegates, experts) involved in episodes of falsification of reports, torture, kidnapping, death, and concealment of corpses committed against 37 victims" (Brasil, 2017, p. 330)²⁵.

In this confusing scenario, the Opinion pointed out that "the implementation of the aforementioned sentence of the Inter-American Court of Human Rights [...] concerning possible civil or criminal judgments falls to the Judiciary itself" (Senado Federal, 2011, p. 13)²⁶.

It is certain that if the STF's understanding of the Amnesty Law does not change, in order for the country to comply with the IACHR's interpretation, the investigations and clarifications of the National Truth Commission will not serve as a basis for an eventual prosecutorial process.

The information gathered in the memory recovery work, which points to criminal accountability, requires, for this punishment to be effective, that the judicial processes conform to the doctrine and jurisprudence of international law, under penalty of the CNV's action be restricted to discover facts that will increase the feeling of impunity.

What the Legislative should have done, given international jurisprudence on the invalidity of the Amnesty Law for cases of human rights violations, considering that the STF left it in its hands to review questions about the 1979 amnesty law, was to repeal, even partially, Law No. 6,683 of 1979 (the Amnesty Law). Therefore, guaranteeing the nation's courts the clarity and legitimacy to impose criminal sanctions on human rights criminals in the name of political activism. After all, the opinion of the Federal Senate CCJ on PL No. 88/2011 recognized that:

In addition to the criminal or civil consequences of serious human rights violations committed, investigated by the Truth Commission, an international body or another source, it will always be up to the Judiciary to settle the controversies arising from them. (Senado Federal, 2011, p. 17)²⁷

contemplados de indenização é do Poder Judiciário, como tem sido feito, inclusive pelo Supremo Tribunal Federal (STF)".

²⁵ Unofficial translation. Original: "*em face de 47 agentes do Estado (militares, delegados de polícia, peritos) envolvidos em episódios de falsificação de laudos, tortura, sequestro, morte e ocultação de cadáver cometidos contra 37 vítimas*".

²⁶ Unofficial translation. Original: "*a implementação da mencionada sentença da Corte Interamericana de Direitos Humanos [...] no tocante a possíveis juízos cíveis ou penais, cabe ao próprio Poder Judiciário*".

²⁷ Unofficial translation. Original: "*Adicionalmente quanto às consequências penais ou civis de violações graves de direitos humanos cometidas, averiguadas pela Comissão da Verdade, por órgão internacional ou por outra fonte, caberá sempre ao Poder Judiciário dirimir as controvérsias delas provenientes*".

It should be stressed that this is already possible and imposed for each magistrate in the country, bearing in mind that the IACHR is hierarchically above the STF, and the Brazilian State has adhered to the Pact of San José's rules (which has a supra-legal character, according to a 1995 decision by the Supreme Court)²⁸.

From the perspective presented by international jurisprudence, the following are human rights:²⁹ i) memory and truth, through the disclosure of facts covered up by the terror of totalitarianism, as well as the ii) right to justice, through material compensation to victims and the condemnation of those guilty of crimes of human prejudice.

This perspective delineates a few duties of the State:

- a) the duty to make every effort to determine the whereabouts of missing victims and, if necessary, to identify and deliver the remains to their relatives;
- b) the duty to offer the medical and psychological or psychiatric treatment that the victims require and, if necessary, to pay for it;
- c) the duty to publicize the sentence in various media and forms;
- d) the duty to carry out a public act of recognition of international responsibility regarding the facts that generated the condemnation of Brazil, through a public ceremony in the presence of high national authorities and the victims of the present case, duly disclosed by the media;

²⁸ "Since Brazil's adhesion, without any reservations, to the International Covenant on Civil and Political Rights (art. 11) and the American Convention on Human Rights - Pact of San José of Costa Rica (art. 7, 7), both in 1992, there is no longer a legal basis for civil imprisonment of the unfaithful depositary, since the special character of these international diplomas on human rights reserves them a specific place in the legal system, being below the Constitution, but above internal legislation. The supra-legal normative status of the international human rights treaties signed by Brazil, thus, renders inapplicable the infra-constitutional legislation that conflicts with it, be it before or after the act of adhesion. This occurred with art. 1.287 of the Civil Code of 1916 and with Decree-Law 911/1969, as well as in relation to art. 652 of the new Civil Code (Law 10.406/2002)". (Extraordinary Appeal 466.343, Rel. Min. Cezar Peluso, vote of Min. Gilmar Mendes, judgment in 3-12-2008, Plenary, DJE of 5-6-2009, with general repercussion). In the same sense: Habeas Corpus 98.893-MC, Rel. Min. Celso de Mello, monocratic decision, judgment on 9-6-2009, DJE of 15-6-2009; Extraordinary Appeal 349.703, Rel. for the ac. Min. Gilmar Mendes, judgment on 3-12-2008, Plenary, DJE of 5-6-2009.

²⁹ In the "VI Guiding Point of the National Human Rights Program (PNDH-3), entitled Right to Memory and Truth, of the Human Rights Secretariat of the Presidency of the Republic. This document establishes several guidelines and objectives related to the recognition of memory and truth as a human right of citizenship and duty of the State, as well as the promotion of the investigation and public enlightenment of human rights violations practiced in the context of political repression in Brazil. The goal is to turn effective the right to memory and historical truth and promote national reconciliation. Also, the PNDH-3 aims at modernizing legislation related to the promotion of the right to memory and truth, strengthening democracy (political repercussion), as well as suppressing from the Brazilian legal system any rules remaining from periods of exception that violate international commitments and constitutional precepts on human rights, which concerns the issue of the Non-compliance Action of Fundamental Principle (ADPF) 153, which discussed in the Federal Supreme Court (STF) the (in)adequacy of the Amnesty Law.

- e) the duty to continue to develop permanent and mandatory training on human rights directed at all hierarchical levels of the Armed Forces;
- f) the duty to classify the crime of forced disappearance of persons following inter-American parameters;
- g) the duty to adopt the actions indicated to guarantee effective prosecution and, if necessary, punishment concerning the facts constituting forced disappearance through the existing mechanisms of domestic law; and
- h) the duty to continue developing initiatives to search, systematize, and publish all information on human rights violations that occurred during the military regime.

Along with these normative issues, which reveal that the Brazilian National Truth Commission possessed the aptitude and focus on performing a work of memory recovery, follows the second part, more related to the relations between memory, history, forgetfulness, and resentment, raised in a context of transitional justice.

2. TRUTH COMMISSION: MEMORY, HISTORY, FORGETFULNESS, AND RESENTMENT

To analyze the role of the Brazilian National Truth Commission (CNV), we start from the theoretical framework established by Paul Ricoeur (2007) in his work *Memory, History, Forgetting*, in which the author expresses a citizen's concern for studying the problem of forgetting. According to him, it involves the issue of memory and fidelity to the past, whereas the problem of forgiveness would involve guilt and reconciliation with the past. Moreover, both problems intersect on a horizon of a "pacified memory", in which lies forgiveness (the last stage of forgetfulness), and of a "happy forgetting".

It is difficult to speak of happy forgetfulness and even to specify what such happiness would be since forgetfulness is seen as a constant common threat to the epistemology of history and the phenomenology of memory. Forgetfulness is seen as damage, weakness, or shortfall to the reliability of memory. Thus, the duty of memory is announced as an exhortation not to forget.

However, aware of the impossibility of a total reflection on all the facts, the possibility of "nothing to forget" is ruled out. In addition to being selective about what to remember or forget, when focused on the conception of historical memory, memory «constitutes an interested, political and manipulative process" (Paixão and Frisso, 2016, p. 194).

Thus, the work of memory recovery by a Truth Commission acts in the tenuous limits between memory and oblivion, without a right balance or an exact measure, in the search for the just constructive and integrating memory of a nation's recorded history. Therefore, one may even question whether forgetfulness is really a dysfunction

considering it is part of the hermeneutic-historical condition of the human being to forget or remember history partially.

In a transitional justice context, amnesty is a constant presence. So as not to be trapped in the anguishing past, but not to forget it for the sake of justice for the victims and care for future generations, the happy memory idea seems to be in the dialectic between history and memory, passing through the proof of forgetfulness and forgiveness, as Ricoeur (2007) thinks. Memory has a democratic potential and, precisely for this reason, as Paixão and Frisso (2016) note, the relationship between memory and reconciliation, as well as between memory and democracy is not established automatically:

It is built, weakly, slowly, from the strengthening of an inclusive public sphere, able to theme and discuss the dictatorial period. The dialogue is important for the construction of a memory that can recognize victimization processes and, at the same time, affirm the humanity of all. (Paixão and Frisso, 2016, p. 193)³⁰

In the meantime, what should be avoided at all costs is what Ricoeur (2007) calls "profound forgetting", which operates by "erasing traces" – eliminating the sources of data relevant to the history of the country – because a "backup forgetting" must be preserved, such as a National Archive, with collections from the Revealed Memories, following the existing Brazilian project.

The profound forgetting can also be mediated by the control of one of the fundamental elements for the socialization of memory: language. Language is not always able to translate or exemplify the facts of human rights violations. The experiences of Nazism, fascism, terrorism, torture, and so many other forms of violence are not always translatable by language (Paixão and Frisso, 2016). This perfect isolation from an experience of horror makes it difficult for us to understand the past. As Paixão and Frisso note:

by controlling language, the dictatorial regime controlled social memory, what can be remembered, and how it can be remembered. In this context, the testimonies made possible by the various mechanisms of transitional justice implemented in Brazil allow us to question these limits. (2016, p. 201)³¹

Since 1964, when the institutional acts³² were produced, this attempt to control the resignifications of words projected for the future can be seen. It is enough to recall how

³⁰ Unofficial translation. Original: "*Ela é construída, fragilmente, lentamente, a partir do fortalecimento de uma esfera pública inclusiva, capaz de tematizar e discutir o período ditatorial. O diálogo é importante para a construção de uma memória que possa reconhecer processos de vitimização e, ao mesmo tempo, afirmar a humanidade de todos*".

³¹ Unofficial translation. Original: "*ao controlar a linguagem, o regime ditatorial controlava a memória social, o que é possível lembrar e como lembrar. Nesse contexto, os testemunhos possibilitados pelos vários mecanismos de justiça de transição implementados no Brasil permitem questionar tais limites*".

³² Institutional acts were produced by the military dictatorship in order to justify and legalize the abusive reforms that violated the 1946 Constitution. The acts suspended fundamental rights and guarantees, being articulated as a kind of original and permanent constituent power.

the term revolution was used in the context of the military dictatorship. Besides this lexicon, police jargon practices are also added, such as "interrogated" and "provided clarification" to represent the practice of torture (Silva Filho, 2008, p. 150-178).

As a principle of amnesty that favors criminals guilty of anti-humanitarian political persecution, an attempt is made to justify amnesty laws to avoid abuses of memory, resentment, and revanchism, thus imposing a pardon. On the other hand, this pardon disregards the risk of abuse of forgetfulness or manipulation of memory, preventing access or forcing citizens to forget and not use their memories, causing the trail to fade, if not erase it.

For the neurosciences, clinically, forgetfulness is close to memory dysfunctions (amnesia). Nevertheless, is it truly a distortion, considering the epistemology of history and the phenomenology of memory? Would there be anything positive about forgetting? We say yes if there is an accessible memory backup. If so, how can a Truth Commission created to recuperate what was forgotten by many or was being forgotten? Also, many did not even have the opportunity to forget because they never knew.³³

The Commission's objective was to fight to avoid erasure of the dictatorship's history by traces or definitive, combating the "de-memorialization" of national history, according to the law that created the CNV, cited above, and to its Internal Rules (Resolução nº 1, 2012), of which article 24 stands out ("It will be up to the Commission to organize, archive and maintain the set of requests and documents filed in it, and preserve those produced by it, creating a collection in honor of the memory and historical truth").

This purpose is confirmed by article 11 and its sole paragraph, of Law 12.528/2011, which instituted the CNV and stipulates that the National Truth Commission should present a detailed report containing the activities carried out, the facts examined, the conclusions and recommendations, sending the entire documental and multimedia collection to the National Archive, to integrate the «Revealed Memories» Project.

In fact, as seen in the first part of this paper, the purpose of the CNV was not, directly, to investigate guilty parties in order to prosecute them but, rather, to proceed with a rescue of facts, information, testimonies, and documents from the period of political repression in Brazil. Thus, the CNV promoted memory recovery work against the definitive oblivion, which came about through erasing traces of what happened in the old dictatorships. In this way, it was completing one of the pillars of transitional justice (late, especially in relation to other countries), running after time and files and testimonies,

³³ Forgetting is confused with memory and constitutes a condition of it. It is forgetting that makes memory possible. Remembrance is only possible on the basis of forgetting. For Ricoeur (2007, p. 451): "In short, forgetting has a positive meaning in that the having-been prevails over the no-longer-being in the meaning bound to the past. Forgetfulness is understood as an immemorial resource offered to the work of remembrance".

of which many no longer survive. The idea is at least to slow down or immobilize the course of profound forgetting ("unhappy" forgetting, to use Ricoeur's style).

For this reason, the CNV, as even the IACHR's sentence suggests, in the Araguaia Guerrilla case, ended up compiling the material in accessible archives to overvalue memorization (remembrance) and the revelation of truth in favor of democratization and reconciliation with the past.

It is interesting how the work of memory recovery by the CNV has real repercussions on politicization and citizenship beyond the generations victimized in the past and contributes to the emancipatory education of those who have not experienced firsthand the times of horror. The collected files (photos, newspapers, videos, for instance) allow a *sui generis* kind of remembrance of a past not lived, but, at the same time, present in the future by the inevitable historical projections, resulting from narratives which are always selective.

Now, recognition is a mnemonic act *par excellence*; it is the small miracle of happy memory, in Ricoeur's words (2007, pp. 437-438). The experience of perception (remembrance) of an absent being who has already been present and returned is the "exact superposition of the present image to the mind and the psychic trail, the concrete act by which we re-learn the past in the present" (Ricoeur, 2007, pp. 437-438).

When the CNV began its work on the time of the dictatorship, it also articulated practices of memory and forgetfulness (as an activity of erosion and maintenance of narratives), which affects history, memory, forgetfulness and forgiveness. For complex reasons, "this process of reconstruction generates mutations in memory that correspond to the implications of the present with the past. By moving socially, memory is also altered" (Paixão and Frisso, 2016, p. 203).³⁴

This path of the CNV's memory recovery work has acted against the memory prevented from accessing the past, and that operates by forging obstacles that cause a "forgetful memory". By reorganizing that space of experience in which natural or even spontaneous memory is projected into the present, its reconstruction observes precise political demands and interests, which can be translated as a vehicle of power (Paixão and Frisso, 2016).

As this journey touches on sensitive issues related to traumas and resentments, it is interesting to observe Freud's idea that forgetfulness is the work of the compulsion of repetition, which prevents the awareness of the traumatic event, replaced by (pathological) symptoms that mask the recalculation (forbidden, censored), but which, in particular circumstances, can return to consciousness (the idea of indestructible/unforgettable knowledge, shared by Bergson) (Ricoeur, 2007).

³⁴ Unofficial translation. Original: "esse processo de reconstrução gera mutações na memória que correspondem às implicações do presente com o passado. Ao movimentar-se socialmente, a memória também é alterada".

The complete work of remembrance, which is positive for the country's democratization process, takes place with the work of mourning, through which the subject is detached from the lost objectives of love and hate, repression and obsession. Forgetfulness can be selective negligence from a cunning side of the unconscious, in a defensive posture, as strategic resources of desire: excuses, lapses, failed acts or confusions, for instance.

The CNV was forced, by legal regulations and international pressure, to avoid undesirable and harmful forgetfulness, but without the intention to create a climate of belligerence in internal or external social coexistence. These effects on a people's collective memory gain gigantic proportions, which the history of memory can bring to light.

The CNV's actions need to be, in a certain way, understood by all interested segments so that a manipulated discourse of memory is not produced, which forgets or remains in the superficiality of facts ideologically contrary to the political groups engaged in the process. It also needs to make sure that certain abuses do not occur, such as throwing light on some aspects of History to divert attention from other dimensions.

The strategies of forgetfulness are directly grafted into this work of configuration: one can always narrate in another way, suppressing, taking off emphases, reshaping differently the protagonists of the action as well as its outlines [...] the greatest danger, at the end of the journey, lies in the handling of authorized, imposed, celebrated history - of official history. (Ricoeur, 2007, p. 455)

In this process of conducting the work of the CNV, it is always necessary to be careful with the narrative of the powerful and with the cunning form of forgetfulness provoked by the dispossession of social actors from their original power of narrating themselves. This process was so to avoid the risk of secret complicity (active and passive), media staging, forgetfulness of escape (bad-faith), and the obscure desire not to inform oneself, not to investigate the evil committed (a willingness not to know): excessive lack of memory by a passive forgetfulness (a deficit of memory recovery work).

According to Ricoeur (2007), commanded forgetfulness is promoted by Amnesty, a real abuse linked to forced memory, which involves the problem of forgetfulness and forgiveness. When the Amnesty is "discretionary", it is essential in the practice of forgiveness (institutional forgetfulness, past declared prohibited), aiming at social pacification. However, for this author, as well as for the IACHR, forgiveness should be carried out with due accusation, condemnation and punishment, under penalty of unduly approaching amnesty and amnesia, denying memory (simulating forgiveness).

Now, Ricoeur acknowledges, amnesty is useful in "reconciling" enemies turning them into "citizens" (as examples: Athens in 403 BC; in France, the Edict of Nantes from Henri IV; amnesty in the French Republic through representative assemblies),

prohibiting memories of the past, determining forgetfulness by means of solemn, magical and sanctioning negative formulas.

[Amnesty establishes] national unity through a language ceremony, prolonged by the ceremonial hymns and public celebrations. However, wouldn't the defect of this imaginary unity be erasing from official memory the examples of crimes likely to protect the future from the faults of the past and, by depriving public opinion of the benefits of dissent, to condemn the competing memories to an unhealthy underground life? (Ricoeur, 2007, p. 462)

For the CNV's work to be a contributor to honest democratic maturity, following the path of Ricoeur's thought, forgiveness should be done in dissent and not in the duty of oblivion, by the commanded amnesia, operated by the 1979 Amnesty Law, which had largely prevented the healthy reappropriation of the past and its traumatic burden. Although the usefulness of amnesty is recognized as an emergency social therapy, with no commitment to historical truth, this can be mitigated by the work of memory recovery, complemented by mourning and guided by a spirit of forgiveness, which is the great burden of a Truth Commission, in addition to an archival role (combating the risks of alterations and erasing material traces), a citizen role as well.

Based on this backup forgetting, the historian can contribute to history's folding, connecting memories rescued with the official narrative until then. The legitimate forgetfulness does not force one not to remember, but appeases the evil without cholera, always in the form of an option and not a commandment to forget.

In the wake of Paul Ricoeur's thought, the role of the Truth Commission and its contributions to democracy must make up for the "deficit of the work of memory", which can be seen as a «passive forgetting» driven by the historical

[...] strategy of avoidance, evasion, escape... acts of negligence, omission, recklessness, improvidence, in all situations of non-action, in which, later on, an enlightened and honest conscience recognizes that one should and could know or at least seek to know, that one should and could intervene. (Ricoeur, 2007, p. 456)

The narratives made by the work of memory recovery, such as the one done by the Truth Commission, besides being elements of an act of citizenship, helping the work of mourning, are constructive of a new historiography (folding history):

The history of the present time is, in this sense, a propitious area for this ordeal, insofar as it is itself on another frontier, one where the words of witnesses still alive and the writing in which the documentary traces of the events have already been gathered. (Ricoeur, 2007, p. 456)

For this work of memory recovery by the National Truth Commission to be fruitful for the process of democratization of the country, it should certainly, besides seeking to ally historical veracity with the memory of the past, be oriented not to incite resentment, as Jeanne Marie Gagnebin warns:

Remembrance also means precise attention to the present, particularly to these strange resurgences of the past in the present, because it is not only a matter of not forgetting the past but also of acting on the present. Fidelity to the past, not being an end in itself, aims at the transformation of the present. (Gagnebin, 2001, p. 89)³⁵

Therefore, from the conceptions of transitional justice, memory recovery work, its pathologies, and risks of provoking resentment, the National Truth Commission's contribution should be oriented by the democratization of Brazil. Even more, in the face of Michèle Ansart-Dourlen's warning that "the memory [recovery] work carried out by historians often produces different points of view regarding the attitudes of 'resentment' that can be discovered in revolutionaries" (Ansart-Dourlen, 2001, p. 348).³⁶

Thus, we work under the perspective of democratic ideology, as presented by Pierre Ansart:

One of the objectives and results of democracy would be to replace violence with tolerance, confrontation with the fruit of hatred by confronting opinions, building spaces for dialogue and reflection, with the effect of liberating expressions, and overcoming hatred through the recognition of people and their rights. The consequence of democratic dialogue would be to allow hostilities' expression and, therefore, their transformation into rationalized claims and their slowing down by becoming aware of opposing interests. The effectiveness of democracy would make it possible to break away from feelings of powerlessness, tearing individuals out of their rancorous ruminations, making them responsible for themselves and active members of a participative society. (Ansart, 2001, p. 348)

The positive contribution of the Truth Commission resembles the idea of Ricoeur's "happy memory", brought by François Dosse (2004) as "reassuring, which we must approach through a true work of memory [recovery] that passes through a re-articulation with the truth" (p. 153), relating this to the phenomenon of forgetfulness and history, so that they can articulate themselves to promote the overcoming of the past, making justice for the memory and avoiding tragic repetitions.

CONCLUSIONS

As seen, the Brazilian National Truth Commission was born at the end of 2011 as a result of various movements, and notably from international pressure, with the condemnation of Brazil by the IACHR in the Araguaia Guerrilla case in 2010. This decision generated several legislative and, consequently, institutional changes to make operational, even if late, the transitional justice in the country.

³⁵ Unofficial translation. Original: "A rememoração também significa uma atenção precisa ao presente, particularmente a estas estranhas ressurgências do passado no presente, pois não se trata somente de não se esquecer do passado, mas também de agir sobre o presente. A fidelidade ao passado, não sendo um fim em si mesmo, visa à transformação do presente".

³⁶ Unofficial translation. Original: "o trabalho de memória realizado pelos historiadores produz muitas vezes pontos de vistas diferentes a respeito das atitudes de 'ressentimento', que se pode descobrir nos revolucionários".

This Commission was created as a tool, among others, devoted to fulfilling the State's obligation to guarantee the right to know the truth about the human rights violations that occurred between 1946 and 1988, performing this memory recovery work to develop the search, systematization, and publication of all information about the human rights violations that occurred during that period.

Because it is not persecutory or punitive in nature, the Commission's collection could serve as a basis for eventual liability, including criminal liability for those guilty of crimes of human injury. If Brazil observed international jurisprudence on the matter, reviewing the rules on Amnesty and the STF's position on ADPF 153, there would be significant legal, political, and historical repercussions.

CNV's performance could also result, with its work of memory recovery, in a folding of history, increased (adulterated and/or recovered) by other versions on the facts, beyond the official narrative, or by the discovery/reconstruction of new facts, without neglecting that the commission's own discourse is, in itself, a fact, a historical event.

After the release of the CNV Report, the reactions to the report were overwhelming. In a context of political crisis that culminated in the impeachment of former President Dilma Rousseff in 2016, requests for constitutional military intervention (an intervention that does not exist in our legal system) grew and are still ongoing today. One of the main effects of the military dictatorship is not only to control the present time of the *coup d'état*, but also to control the future, especially about what or how to think about the military regime.

These attempts at positive memory about the dictatorship forged generations, and intergenerational dialogue is mediated by these false spoken perceptions of reality.

The CNV report was an important instrument for the Federal Public Prosecutor's Office to initiate legal proceedings against human rights violators. Dozens of these cases were prevented by the Federal Court, under the argument that ADPF No. 153/2010 prevented the opening of such investigations and punishments. Even so, there were exceptions, such as the decision of the Federal Court of São Paulo of recognizing as a crime against humanity an act committed by a former agent of the dictatorial repression. This decision, handed down in June 2021, is already considered historic (Meyer *et al.*, 2021).

The narratives made by the work of memory, such as the one carried out by the Truth Commission in Brazil, constitute, therefore, a practice of citizenship, helping the work of mourning, of reconciliation with the past, and in the reconstruction of the national historiography. However, for its effects to be extracted positively over time, it demands a political engagement that involves an adequate interpretation of the 1988 Constitution within a transitional constitutionalism.³⁷

³⁷ See more in Lemos (2018).

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