



The Legacy of Transitional Justice in Brazil: Experiences and Challenges

As Marcas da Justiça de Transição: Experiências e Desafios

Las características de la justicia transicional: experiencias y desafíos

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Abstract

This paper is the result of more than a hundred hours of digital research and field research on transitional justice in the city of Recife. It was taken as a starting point UN Security Council Resolution S/2004/616 on the rule of law and transitional justice in post-conflict societies and the international doctrinal construction on transitional justice from the International Center for Justice of Transition (ICTJ). According to these standings, how does this phenomenon (of transitional justice) become concrete and accessible in Recife city? Experiences made, documented and made available through the internet, in addition to the experiences scattered in various places of the city were used to answer the question. Then, ten categories of experiences were identified: 1. places of/to memory; 2. Collective groups actions about memory, truth and justice; 3. books; 4. documentaries and reports; 5. audios; 6. feature films and theater plays; 7. internet channels; 8. special projects; 9. justice (national and international jurisdiction); and 10. institutional changes. From the material collected, it is possible to understand that: a. there is a specific action by civil society; b. there is an individual repair mechanism; c. there is diffuse symbolic reparation; d. there is a new truth conception; e. some places of memory remain as non-memory; f. the judicialization of criminal facts against humanity remains hampered in national jurisdiction; g. there were no measures about profound institutional changes in the Brazilian State.

Keywords: Amnesty; Military Dictatorship; Memory; Truth.

Sumário

Este artigo é resultado de mais de cem horas de pesquisa digital e pesquisa de campo sobre justiça transicional na cidade do Recife. Foi tomada como ponto de partida a Resolução do Conselho de Segurança S/2004/616 sobre o Estado de direito e justiça de transição nas sociedades pós-conflito e a construção doutrinária internacional sobre a justiça transicional Internacional do Centro para a Justiça de Transição (ICTJ). Em vista desse paradigma, como esse fenômeno (da justiça transicional) se torna concreto e acessível na cidade do Recife? Experiências feitas, documentadas e disponibilizadas pela internet, além das experiências dispersas em vários locais da cidade, foram utilizadas para responder à pergunta. Em seguida, foram identificadas dez categorias de experiências: 1. lugares de/para a memória; 2. Ação de grupos coletivos sobre memória, verdade e justiça; 3. livros; 4. documentários e reportagens; 5. áudios; 6. filmes de longa metragem e peças teatrais; 7. canais digitais; 8. projetos especiais; 9. justiça (jurisdição nacional e internacional); e 10. mudanças institucionais. A partir do material coletado, é possível entender que: a. existe uma ação específica da sociedade civil; b. existe um mecanismo de reparo individual; c. há reparação simbólica difusa; d. existe uma construção da verdade; e. alguns lugares de memória permanecem como não-memória; f. a judicialização de fatos contra a humanidade continua prejudicada na jurisdição nacional; g. Não houve medidas sobre as profundas mudanças institucionais no Estado brasileiro.



Palavras-chave: Anistia; Ditadura Militar; Memória; Verdade.

Resumen

Este artículo es el resultado de más de cien horas de investigación digital y de campo sobre la justicia transicional en la ciudad de Recife. Se tomó como punto de partida la Resolución del Consejo de Seguridad S/2004/616 sobre el estado de derecho y la justicia transicional en sociedades post-conflicto y la construcción doctrinal internacional sobre justicia transicional del Centro Internacional para la Justicia Transicional (ICTJ). Frente a este paradigma, ¿cómo este fenómeno (de justicia transicional) se vuelve concreto y accesible en la ciudad de Recife? Para responder a la pregunta se utilizaron experiencias realizadas, documentadas y disponibles en Internet, además de experiencias dispersas en varios lugares de la ciudad. Luego, se identificaron diez categorías de experiencias: 1. lugares de/para la memoria; 2. Acción de grupos colectivos sobre memoria, verdad y justicia; 3. libros; 4. documentales y reportajes; 5. audios; 6. largometrajes y obras de teatro; 7. canales digitales; 8. proyectos especiales; 9. justicia (jurisdicción nacional e internacional); y 10. cambios institucionales. Del material recolectado se puede entender que: a. hay acciones específicas por parte de la sociedad civil; b. existe un mecanismo de reparación individual; w. hay reparación simbólica difusa; d. hay una construcción de verdad; y. algunos lugares de la memoria permanecen como no memoria; F. la judicialización de hechos de lesa humanidad continúa obstaculizada en la jurisdicción nacional; gram. No hubo medidas respecto a los profundos cambios institucionales en el Estado brasileño.

Palabras-clave: Amnistía; Dictadura Militar; Memoria; Verdadero

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1. Introduction

This is a huge research about respecting for the right to memory and truth as well as the fight for justice in the city of Recife, Pernambuco, Brazil, where important actions of resistance to the Military Dictatorship (1964-1985) happened. All systematized information shows the process of redemocratization is full of challenges.

The multidimensionality of the serious violations of human rights practiced by the Military Dictatorship in Brazil are still noticeable as seen in many places used as torture places, but not officially recognized as a memory place. The mutilation of memory and the fragmentation of primary information is the result of perverse gear that eliminated at least 51 dead and disappeared people only in Pernambuco, according to the State Commission on Memory and Truth Dom Helder Camara (CEMVDHC).

CEMVDHC reports series of evidences that demonstrate the need for theoretical insights into what Hannah Arendt called the banality of evil. In addition, it is necessary to build and deepen the reconciliation paradigm. Reconcile forgetting? Reconciling reflecting? Or reconcile with Justice? For Federal Supreme Court (STF), to reconcile is, in popular terms, "to put a stone over the facts".

The legal basis starting point is Article 8 of the Transitional Constitutional Provisions Act (ADCT)¹ of the 1988 Federal Constitution and the 3rd National Human Rights Plan² (PNDH III - Decree 7.037 / 2009, updated by Decree 7.177 / 2010). Between the broadest legal rules and the most feasible legal rule, there is a temporal lapse of more than twenty years. This shows, in part, that the transition from authoritarianism to democracy has not yet been completed in Brazil.

Article 8 of the ADCT established the basis for the Brazilian transitional justification process in the light of economic reparation. The bases for the consolidation of a political amnestied regime were created in the 1988 Constitution, the recognition of practices of serious violations under international human rights law.

The consolidation of this legal process of structuring a national memory policy coordinated by a federal body would only be enforced with the enactment of Law 10,559, from November, 13, 2002. In this legal repository, it was possible to assure the fundamental right to memory and applicants residing in Brazil or abroad. It is the great milestone of the struggle for

¹ Establishes the granting of amnesty to persons affected by acts of exception because of their political activities. It still lays claim to indemnification for public servants and private employees, who, for political motivation, were persecuted. Individuals whose specific professional activity was impaired as a result of the Act of the Ministry of Air Force No. S-50-GM5, June 19, 1964 and No. S-285-GM5 are guaranteed their indemnification. Persecuted city councilors are supported to register the time of free elective term for retirement purposes.

² Right to Memory and Truth. Guideline 23: Recognition of memory and truth as a Human Right of citizenship and duty of the State. Guideline 24: Preservation of historical memory and the public construction of truth. Guideline 25: Modernization of legislation related to the promotion of the right to memory and truth, strengthening democracy.



human rights insofar as it consolidates a State agenda, based on international human rights principles and treaties.

This paper is the result of more than a hundred hours of digital research and field research on transitional justice in the city of Recife. First of all, focus on UN Security Council Resolution S/2004/616³ on the rule of law and transitional justice in post-conflict societies and the international doctrinal construction on transitional justice, from the International Justice of Transition (ICTJ)⁴.

Doctrinally, there is no uniform, closed, finished and considered complete model on how transitional justice can be realized. Each country and each concrete event, in due time, demanded particularized actions that confirm this affirmation. There is, however, something in common, of course: the four basic obligations of the state in this period of transition from arbitrariness to redemocratization. First: adoption of measures to prevent human rights violations; second: investigation and elucidation of the serious acts of violation practiced; third: accountability of the agents of these violations; and fourth: repair the victims. The main thing is to investigate and prosecute the perpetrators of human rights violations, to punish any guilty parties, to make extensive reparations to the victims, to recover the reality of the facts, to reform state institutions in order to prevent further arbitrary times.

According to theses standings, the following question was raised: how extent does this phenomenon (of transitional justice) become concrete and accessible, in a broad sense, in the city of Recife? For the answer, they were used empirical research, experiences documented and made available through the internet, in addition to the experiences scattered in various parts of the city. These experiences concern people and events that occurred during the 1964-1985 military dictatorship, with direct or indirect effects, placing the local context of Recife in a national and regional context of arbitrary repression.

Ten categories of experiences were identified: 1. places of/to memory; 2. collective groups actions about memory, truth and justice; 3. books; 4. documentaries and reports; 5. audios; 6. feature films and theater plays; 7. Internet channels; 8. Special projects; 9. justice (national and international jurisdiction); and 10. institutional changes.

2. Information from field

Considering the Security Council Resolution S/2004/616 and the doctrine from International Justice of Transition in the ICTJ Manual, it is noticeable that transitional justice

³ The notion of transitional justice discussed in the present report comprises the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof.

⁴ Transitional justice means joint efforts to promote sustainable peace after a period of severe turbulence in a society, whether internal conflict or episodes of serious violence or systematic violation of human rights (ZYL, 2011, p.47)



reflects a dynamic relationship between a concept of justice pursued and the more or less restrictive political conjuncture, but always with the objective of restoring and preserving peace (TEITTEL, 2011, p. 136).

This (un)balance of forces guides the definition of which judicial and extrajudicial mechanisms will be used to deal with human rights violations practiced in the past for the purpose of promoting reconciliation in the present (UNITED NATIONS, 2004).

There are, then, two huge objectives to be sought: making peace and making reconciliation.

With this in mind, the phase of information collection began. As result of empirical research and documentation collection, ten categories of experiences were identified: 1. places from/to memory; 2. collective group actions about memory, truth and justice; 3. books; 4. documentaries and reports; 5. audios; 6. feature films and theater plays; 7. internet channels; 8. projects; 9. justice (national and international jurisdiction); and 10. institutional change.

About category 1: places to / from memory. In this item, there are identified and unidentified places. Among the identified places: *Complexo da Rua da Aurora*⁵, *Viadutos da Avenida Governador Agamenon Magalhães*⁶, *Viaduto da Caxangá*⁷, *Reitoria da Universidade Federal de Pernambuco*⁸ and *Viaduto Tancredo Neves*⁹. *Ponte da Torre*¹⁰, *Praça do Parnamirim*¹¹, *DOPS Recife*¹² – torture place -, *Casa de Detenção*¹³ – political prison and torture place -, *Casa de Passagem*¹⁴ – political prison and torture place -, *Vila Buriti*¹⁵, *Igreja das Fronteiras*¹⁶ – Dom Helder Camara home, and *Arquivo Público Jordão Emerenciano*¹⁷ - Public Archives – (CLINICA DIREITOS HUMANOS, 2017).

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- 5 Explanation note: *Complexo da Rua da Aurora* is available at: https://clinicadireitoshumanos.files.wordpress.com/2017/09/img_20170910_092701.jpg, 16 December 2020.
- 6 Explanation note: *Viadutos da Avenida Governador Agamenon Magalhães* is available at: https://clinicadireitoshumanos.files.wordpress.com/2017/09/img_20170910_074316.jpg, 16 December 2020.
- 7 Explanation note: *Viaduto da Caxangá* is available at: https://clinicadireitoshumanos.files.wordpress.com/2017/09/img_20170910_084610.jpg, 16 December 2020.
- 8 Explanation note: *Reitoria da Universidade Federal de Pernambuco* is available at: https://clinicadireitoshumanos.files.wordpress.com/2017/09/img_20170910_083242.jpg, 16 December 2020.
- 9 Explanation note: *Viaduto Tancredo Neves* is available at: https://clinicadireitoshumanos.files.wordpress.com/2017/09/img_20170910_080539.jpg, 16 December 2020.
- 10 Explanation note: *Ponte da Torre* is available at: <https://clinicadireitoshumanos.files.wordpress.com/2017/09/placa-candido-pinto.jpg>, 16 December 2020.
- 11 Explanation note: *Praça do Parnamirim* is available at: <https://clinicadireitoshumanos.files.wordpress.com/2017/09/pe-henrique.jpg>, 16 December 2020.
- 12 Explanation note: *DOPS Recife* is available at: <https://clinicadireitoshumanos.files.wordpress.com/2017/09/dops-recife.jpg>, 16 December 2020.
- 13 Explanation note: *Casa de Detenção* is available at: https://clinicadireitoshumanos.files.wordpress.com/2017/09/img_20170917_0913441.jpg, 16 December 2020.
- 14 Explanation note: *Casa de Passagem* is available at: <https://clinicadireitoshumanos.files.wordpress.com/2017/09/casadepassagem.jpg>, 16 December 2020.
- 15 Explanation note: *Vila Buriti* is available at: <https://clinicadireitoshumanos.files.wordpress.com/2017/09/vila-buriti.jpg>, 16 December 2020.
- 16 Explanation note: *Igreja das Fronteiras* is available at: <https://clinicadireitoshumanos.files.wordpress.com/2017/09/dsc03811fronteiras-mc2aahelenan.jpg>, 16 December 2020.
- 17 Explanation note: *Arquivo Público Jordão Emerenciano* is available at: <http://arquivopublico.pe.gov.br/>, 16 December 2020.
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Places without any identification as memory place: *DOI CODI Recife*¹⁸ – torture place, still in use -, *Colônia Penal Feminina Bom Pastor*¹⁹ – female prison, still in use -, *Penitenciária Barreto Campelo*²⁰ – political prison, still in use -, *Cemitério da Várzea*²¹ – cemetery where unidentified bodies were buried, still in use -, *Auditoria Militar em Pernambuco*²² – Military Justice Building, still in use - (CLINICA DIREITOS HUMANOS, 2017).

About category 2²³: Collective groups actions on memory, truth and justice: associated people, organized temporarily or permanently, as a public or private organizations, with the aim of promoting collective actions before public authorities on memory, truth and justice or to lend relevant public service. Among the collectives groups: *Grupo de Trabalho em Justiça de Transição do Ministério Público Federal* (Transitional Justice Working Group of the Federal Prosecutor), *Comissão de Justiça e Paz* - Justice and Peace Commission from Archdiocese of Olinda and Recife, Catholic organization (Civil Society), *Comitê Brasileiro para Anistia* - Brazilian Committee for Amnesty (Civil Society) , *Grupo de Estudos sobre Internacionalização do Direito e Justiça de Transição* - IDEJUST - (Civil Society), *Comitê Memória, Verdade e Justiça de Pernambuco* - Memory Committee, Truth and Justice of Pernambuco (Civil Society), *Movimento Tortura Nunca Mais* (Civil Society), *Centro Cultural Manoel Lisboa* – Manoel Lisboa Cultural Center - (Civil Society), *Associação de Anistiados Políticos de Pernambuco* - Pernambuco Association of Political Amnesties - APAP - (Civil Society), *Associação de Anistiados e Anistiandos de Pernambuco* - ADNAPE - (Civil Society) (CLINICA DIREITOS HUMANOS, 2017).

Among the groups to provide public service of this relevance: National Commission on Truth (Secretariat of Human Rights, federal body), State Commission on Memory and Truth Dom Hélder Câmara (Government of Pernambuco), Amnesty Commission (Ministry of Human Rights, federal body), Special Commission on the Death and Disappearance Politicians (Ministry of Human Rights, federal body), Special Commission for Indemnification (Government of Pernambuco).

About category 3²⁴: biographical and investigative books: *Brasil Nunca mais*, Archdiocese of São Paulo; *Cárceres da Memória*, Chico de Assis; *Onde está Meu Filho?*, Chico de Assis, Cristina Tavares et al., *Cadernos da Memória e Verdade, Volume VI*, CEMVDHC Special Document, volume VI, Final Report of State Commission – CEMVDHC - , Volume I and II; Final Report of National Commission on Truth, volume I, II and III; *Chacina*

- 18 Explanation note: *DOI CODI Recife* is available at: https://clinicadireitoshumanos.files.wordpress.com/2017/09/militaerkrankenhausei_codi_recife_mai2014.jpg, 16 December 2020.
- 19 Explanation note: *Colônia Penal Feminina do Bom Pastor* is available at: <https://clinicadireitoshumanos.files.wordpress.com/2017/09/instituto-bom-pastor.jpg>, 16 December 2020.
- 20 Explanation note: *Penitenciária Barreto Campelo* is available at: <https://clinicadireitoshumanos.files.wordpress.com/2017/09/dfec93dba9904de7129598b95181538e.jpg>, 16 December 2020.
- 21 Explanation note: *Cemitério da Várzea* is available at: <https://clinicadireitoshumanos.files.wordpress.com/2017/09/mov-estudantil-popular-revolucion3a1rio.jpg>, 16 December 2020.
- 22 Explanation note: *Auditoria Militar em Pernambuco* is available at: <https://clinicadireitoshumanos.files.wordpress.com/2017/09/j-militar-recife.jpg>, 16 December 2020.
- 23 Explanation note: all collective groups are available at: <https://clinicadireitoshumanos.wordpress.com/justica-de-transicao/>, 16 December 2020.
- 24 Explanation note: the complete list of books is available at: <https://clinicadireitoshumanos.wordpress.com/justica-de-transicao/>, 16 December 2020.



da Chácara São Bento, Luiz Felipe Campos, *Recife Lugar de Memória*, Plínio Santos-Filho et al.; *Protagonistas do Araguaia*, Patrícia Mechi; *Dossiê Itamaracá*, Joana Cortes; *Sala Escura da Tortura*, Julio Le Parc and Others; *O Brasil pede Perdão*, Maria José Coelho and Vera Rotta, *Informação, Repressão e Memória*, Marcília Gama da Silva; *Coleção Anistia e Justiça de Transição*, Ministry of Justice, *Dossiê de Mortos e Desaparecidos a partir de 1964*, Movimento Tortura Nunca Mais Rio de Janeiro e Pernambuco, *Manual de Justiça de Transição para a América Latina*, ICTJ and UNDP (CLINICA DIREITOS HUMANOS, 2017).

About category 4²⁵: from documentaries and reports by commercial and non-commercial communication vehicles: *O Morro de Sevi*, Brazil: the troubled land, *Cabra Marcado para Morrer*, *Engenho Galileia*, *Galeria F*, *Em busca da Verdade* - Episode 1 and 2, *As Asas Invisíveis do Padre Enzo*, *Marcas da Memória*, *Memórias Clandestinas – Alexina e as Ligas Camponesas*, *A Mesa Vermelha*, *Atentado no Aeroporto dos Guararapes*, *Anistia 30 anos*, *Olhares Anistia*; *Vou Contar para meus Filhos*; *Aurora 1964*; *Lua Nova do Penar*; *AI5 o dia que não existiu*; *Dossiê Jango*; *Os Advogados contra a Ditadura: por uma questão de justiça*; and *Universitárias(os) e o Decreto 477* (CLINICA DIREITOS HUMANOS, 2017).

About Category 5²⁶: audios: Governor Miguel Arraes in a statement about the coup in progress (1964), collections from *Empresa Brasil de Comunicação – EBC* -, from *Instituto João Goulart* and from *Documentos Revelados*, and *A madrugada que a nação ficou acéfala* (CLINICA DIREITOS HUMANOS, 2017).

About Category 6²⁷: feature films and theater plays that show the various circumstances surrounding resistance (cells formed, strategies for political and military actions and artistic expression as a form of political action) and repression (torture, abductions, summary executions and disappearances): *Pra Frente Brasil*; *O que é isso, Companheiro?*; *Lamarca*; *Cabra-Cega*; *Batismo de Sangue*; *O ano em que meus pais saíram de férias*; *Tatuagem*; *Amores de Chumbo*. Theater plays: *Vestígios*, direction by Antônio Cadengue; and *Retratos de uma Lembrança Interrompida*, direction by Emanuella de Jesus (CLINICA DIREITOS HUMANOS, 2017).

About category 7²⁸: video channels on internet: *Videoteca Anistia*; *Mostra Virtual de Vídeos Brasil Nunca Mais*; and *Ditaduras latino-americanas* (CLINICA DIREITOS HUMANOS, 2017).

About category 8²⁹: Special Projects: *Cartografia da Ditadura*; *Memórias da Ditadura*; *Armazém Memória*; *Memorial das Ligas Camponesas*; Brown University – open files -; *Brasil.doc* – files from Federal University of Minas Gerais -; *Memorial da Anistia*; *Projeto*

25 Explanation note: the complete list of documentaries is available at: <https://clinicadireitoshumanos.wordpress.com/justica-de-transicao/>, 16 December 2020.

26 Explanation note: the complete list of audios is available at: <https://clinicadireitoshumanos.wordpress.com/justica-de-transicao/>, 16 December 2020.

27 Explanation note: the complete list of movies is available at: <https://clinicadireitoshumanos.wordpress.com/justica-de-transicao/>, 16 December 2020.

28 Explanation note: the complete list of vídeo channels is available at: <https://clinicadireitoshumanos.wordpress.com/justica-de-transicao/>, 16 December 2020.

29 Explanation note: the complete list of all special projects is available at: <https://clinicadireitoshumanos.wordpress.com/justica-de-transicao/>, 16 December 2020.



Marcas da Memória; Projeto Clínicas do Testemunho; Projeto Adote uma Memória; Povos Indígenas – Relatório Figueiredo and Resistência em Arquivo (CLINICA DIREITOS HUMANOS, 2017).

About category 9³⁰: Justice: legal initiatives with diffuse and individual emblematic effects with the aim of obtaining punitive measures and reparation for the victims of the serious human rights violations that happened between 1964 and 1985 before Brazilian national jurisdiction, before Inter-American Court of Human Rights and before Inter-American Commission on Human Rights. Cases before national jurisdiction: *ADPF 153* – Federal Supreme Court -, *Lista de ações penais* – Federal Prosecutor -. Cases before international jurisdiction: Case Gomes Lund and Case Vladimir Herzog – Inter-American Court on Human Rights; *Jurisprudência em Anistia e Direitos à Verdade*, from Inter-American Court on Human Rights and United Nations Special Rapporteurship on Promoting Truth, Justice, Reparation and Non-Repetition (CLINICA DIREITOS HUMANOS, 2017).

About category 10³¹: institutional practices changes. Which institutional reforms were planned and implemented with the objective of non-repetition of past arbitrariness? For the Executive Branch, the Legislative Branch, the Judiciary, the Armed Forces, the Police and the Penitentiary System, the concepts of material democracy³² and social control³³ pass away from these institutions. This paper focus Judiciary and its mean judgment about transitional justice (CLINICA DIREITOS HUMANOS, 2017).

3. Partial Effectiveness

The right to truth encompasses the possibility of clarifying the past to the victims and to all society in order to enable the construction of history and allows the recognition of the injustices that have been committed by the State and its agents. According to Borges: *"The establishment of an official truth about an authoritarian past can help future generations to recognize and resist a return to abusive practices"* (BORGES, 2012, p.158).

The function of memory is equivalent to the search for reconciliation and restoration as in the example of South Africa. According to Bastos: *"Memory equals, then, the demand for justice, since forgetting would be the sanction of injustice"* (BASTOS, 2009, p.87).

On memory and truth, they are contemplated in part. The existence of places from/to memory is primarily symbolic and, in the long-term, is an educational tool about history, its

³⁰ Explanation note: the complete list of all legal actions is available at: <https://clinicadireitoshumanos.wordpress.com/justica-de-transicao/>, 16 December 2020.

³¹ Explanation note: the complete list of all institutional practices changes is available at: <https://clinicadireitoshumanos.wordpress.com/justica-de-transicao/>, 16 December 2020.

³² Material Democracy goes beyond procedures (the whole of which characterizes formal democracy) to focus attention on the broad realization of the human person, his fundamental rights and his Dignity. For this, it gives limits and controls the political power from this focus (DALLA-ROSA, 2007, p.217)

³³ Social control is in the sense of monitoring society over the state and not the other way around. The perspective of this work is the consideration of the work of civil society to influence public management, budget and state actions based on their interests.



characters, time and space, all integrated. Therefore, without the consolidation of this instrumental perspective, the memory place becomes a mere architectural entity and a mere art expression without its primary motivation. It is not enough to identify memory places, they must be experienced.

Some memory places have not been formally identified, but appear in several reports and documents about truth and memory. *DOI-CODI Recife*, at 4th Army Headquarters, does not have an indicative sign, but was identified as a torture prison by political prisoners, in several reports, thanks to the bell from Law Faculty of Recife, whose building is in front of the Headquarters building. *Colônia Penal Feminina Bom Pastor*, where there were female political prisoners, it had its participation recorded as a space of memory in the documentary *Vou Contar para meus Filhos*. *Penitenciária Barreto Campelo*, where there were political prisoners. They appear in the book *Dossiê Itamaracá*.

The political resistance of the people on the outskirts of the city seems in the report *O Morro de Sevi*. The resistance of the field appears in the report *Engenho Galileia* and in the feature film *Cabra Marcado para Morrer*. Indigenous political and cultural resistance, its struggle for land and torture against them, is told from the *Relatório Figueiredo*.

Books, documentaries, reports, films, especially those made from the 1990s rewrite other version of history, different from the military dictatorship version written in military police inquiries (IPM) and in military criminal proceedings. Still, the book *Brasil Nunca Mais* exposes the cruel side of the IPM, about the usual practice of torture to obtain information and to degrade prisoners.

The efforts of the National Commission on Truth (CNV) and the State Commission for Memory and Truth Dom Helder Camara (CEMVDHC) deserve special mention. These two commissions exposed false versions of the history and created the opportunity to present new versions for facts and for further research and investigation to be promoted and carried out after the completion of their mandate.

Regarding two examples of the work of the CNV. São Paulo State Justice ordered the change of the death certificates of the journalist Vladimir Herzog and the student Alexandre Vannucchi Leme, after request from the CNV. Both were killed before the authoritarian regime, victims of torture practiced by the agents of the repression while they were arrested inside political prisons. They were used false versions to attest deaths of tortured political prisoners. About Vladimir Herzog and Alexandre Vannucchi Leme, the official version was that they had committed suicide. Herzog had been hanged in prison and Vanucchi was hit by truck.

About Herzog, the death certificate was modified. "*cause mortis*" of "mechanical asphyxia" to death as a result of "injuries and ill-treatment suffered in the of the 2nd Army Headquarters, in São Paulo City (*DOI-CODI*)". He was murdered in 1975 at age of 38.

Alexandre Vannucchi was a member of *Aliança Libertadora Nacional* (ALN), a recognized leader of the geology course at the University of São Paulo (USP), and was killed in March 1973 at the age of 22. It was reported at the time that he would have thrown himself



against a truck, and death certificate for "traumatic brain injury" appeared on the death certificate. In the face of the evidence gathered by the National Commission on Truth, it was proved that the death occurred due to "injuries torture and ill-treatment".

Two examples from CEMVDHC, State Judge Patricia Rodrigues Ramos Galvão ordered to rectification of death certificate of Hezekiah Bezerra da Rocha (PERNAMBUCO, 2017, p.193), who died at the age of 28 on March, 12, 1972. He was militant of *Partido Comunista do Brasil* (Communist Party of Brazil). He and his wife, Guilhermina, they were disappeared by enforcement agencies as a result of a series of operations to arrest communists. About Hezekiah Bezerra da Rocha, it was registered as the cause of death: "shock death caused by traumatic brain injury and trunk penetrating injury abdomen, respectively, by sharp and cutting and piercing instrument".

The case of Anatólia Melo Alves (PERNAMBUCO, 2017, p.211), she was murdered on January, 22, 1973, at the age of 28 at the Department of Order and Social Policy of Pernambuco State (*DOPS*), Secretariat of Public Security. The official version presented by enforcement agencies was: death by suicide. She would have used the "handle of the bag" to commit suicide. It is a version set up to cover up serious human rights violations committed by law enforcement agencies.

On October 29, 2014, State Judge Paula Maria Malta do Rego ordered the rectification of the death certificate of death of Anatólia, in the following terms: Place of death: DOPS Recife. Cause of death - "Choking by strangulation (homicide)".

The results of the efforts of the Commissions on Truth in Brazil may present a legal legacy of recognition of the right to memory and truth as a collective right. Reports, testimonies and documents presented to commissions contribute to strengthen an awareness of citizen justice in engaging new generations in the grammar of human rights in Brazil.

Another important aspect of this right is the capillarity that commissions reports may achieve. The reports are not only the diagnosis of problems reported by the victims and by the facts narrated by public hearings. It is essential to consolidate a new range of possibilities in order to make concrete values and fundamental guarantees.

Brazil presents insufficient initiatives aimed at rescuing and repairing the memory of the dictatorial period in the face of those who fought and fell for democracy. However, the Brazilian state has been providing its duty to repair for a long time. According to Tavares and Agra:

After the entry into force of the citizens' constitution, several voices arose pleading compensation to the victims of the dictatorship and punishment for the crimes committed. However, with the Collor Government's inauguration, such voices were muted because of the President's connections with the regime of exception. During the government of Itamar Franco there was little relevant progress, leaving the theme in the twilight. In the Fernando Henrique Cardoso Government, Law No. 9,140, dated 12.44.1995, amended by Law No. 10,536 of 2002, was approved, which finally recognized as effectively dead, for all legal purposes, persons who had participated in political activities between 1961 and 1988, in addition to having created a Special Commission, in order to recognize the political disappeared, to work for the location of



their bodies and to proceed with the analysis of claims for reparation (TAVARES e AGRA, 2009, p.81).

All repair payments became to be made from the Law 9.140/1995, as described by Borges (2012). According to Tavares and Agra: *"For the first time, the possibility of repair for the political disappeared was recognized, from which it was attested his death"* (TAVARES e AGRA, 2009, p.85). The Law of Repair nº 10.559/2002 regulated the indemnities for the Brazilians who suffered some type of persecution by the military regime. According to Borges:

[...] the creation of Law 10,559 which promoted the functioning of the Amnesty Commission and also established the possibility for the State to administratively repair the economic damages inflicted on ex-persecuted military regime. This Act represented a significant milestone in advancing the issue of compensation. The values of the reparation are based on the time in which the amnesty was removed from the professional activities (BORGES, 2012, p.135-136).

The Brazilian State has fulfilled, in different ways (mainly financial) its duty to repair. This dimension is the one that has most developed in Brazilian present experience. According to Meyer:

The advent of Law 10,559, of November 13, 2002, allowed the institution within the scope of the Amnesty Commission from Ministry of Justice to regulate Article 8 of the Transitional Constitutional Provisions Act. It instituted the regime of the political amnestied that, after having recognized this condition by the Commission, is entitled to a declaration in this sense, to an economic reparation of indemnity, the count of time, for all the effects of the periods of withdrawal of professional activities, conclusion of course for the punished student or record of diploma obtained abroad and the reintegration of punished public servants or employees. The great advance of the amnesty Commission was from 2007, with the overcoming of the concept of amnesty as a policy of forgetfulness. The testimonies conditioning the grant of amnesty play an important role of recording memory. Through the so-called 'Amnesty Caravan', the work is being carried out in several places in the country, where human rights violations have occurred, further publicizing the work of the Amnesty Commission (MEYER, 2012, p. 266).

Imperfect repair, through pecuniary compensation at most, have been the brand of the Brazilian State.

4. Ineffectiveness Examples

The duty to investigate, prosecute and punish human rights violators, to disclose the truth, to provide adequate redress with institutional practices changes are linked to the right to justice, truth, right to compensation and reorganized institutions. According to Borges:

The right to justice is realized when the trial of human rights violators is allowed. Thus, although the trials are particularly complicated in this context, in which the State, by the means of its agents, has committed serious violations of human rights, punishing violators by means of judgments can serve to avoid the practice of such crimes in the future and as well as comfort for the victims (BORGES, 2012, page 157).

In relation to change public organizations, in fact, to promote institutional changes of organizations involved with violations of human rights, they mainly focus on police or military



security services. In Brazil, there were no official initiatives to identify violators. According to Mezarobba:

(...) It is true that, after being recognized by some victims or appointed by the press, some (few) accused of violating human rights were urged to leave their posts, but not all of them ignored Colonel Carlos Alberto Brilhante Ustra, when he held the post of military attaché to the Brazilian embassy in Montevideo, and Colonel Armando Avílio Filho, established in the same capacity at the London embassy. Without the annulment of the Amnesty Law, some changes that occurred shortly after the transition, in the position of the government in relation to the human rights issue, were not sufficient to bring justice to the victims of the military regime (MEZAROBBA, 1999, p.49).

The judgment of ADPF 153 unmasked a faltering and troubled Federal Supreme Court (STF). Vacillating as a republican institution to act to the detriment of other institutions, specifically, in this case, in relation to the armed forces, whose high members encouraged and practiced torture unreasonably. Bothered in having to decide on an interconstitutional case, to say what is of right from an imposed and authoritarian juridical order to the present constitutional legal order.

According Judge Eros Grau, basically, from the legal point of view, if the law of amnesty was not received by new constitutional order, then it brings financial loss to the amnesty:

What is intended is extremely contradictory: the abrogation of the amnesty in all its scope, even leading to stormy and unbearable financial consequences for the amnesties who received indemnities from the State, compelled to return to the public coffers everything they have received until now as indemnity. The origin of the action would lead to this dismal result (STF, 2010, p.24).

On the other hand, for the extra-legal arguments, Judge Eros Grau assumed the possibility of the amnesty as the result of a political agreement at that time (1979).

In the beginning, perhaps it was ignored the most important moment in the struggle for the country's redemocratization, the battle of amnesty, a real battle. Everyone who knows our history knows that this political agreement existed, resulting in the text of Law no. 6.683/1979. The search for the subjects of History leads to the 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 one another. Men can do so only in the material limits of reality. So that they can do it, history, they must be able to do it. It is there, in the 18 Brumaire of Louis Bonaparte: "Men make their own history, but they do not do it as they wish, do it not under circumstances of their choice, but under those they face directly, bequeathed and transmitted by the past" (STF, 2010, pp. 25-26).

At first, the legal basis for repairing to persons persecuted by the previous authoritarian regime is constitutional, *Article 8 ADCT* and not in the amnesty law (6.683/1979).

Second, STF did not make the conventionality control, which would refer the case to be analyzed from the Human Rights treaties and the jurisprudence of the Inter-American Court of Human Rights. At that time, it was largely consolidated to declare the laws of auto-amnesty unconventional (COURT, 2014).



Third, there was no battle for amnesty. There is no legitimate debate of ideas, concept and amplitude of amnesty in Brazil. The Brazilian Committee for Amnesty, for example, had no representative at National Congress to bring the suit. And the option for amnesty did not have the political support to guide the debate. There was a unilateral pressure from the military regime to control its concept of amnesty.

Certainly, one of the controversy decisions in the history of the STF. From the institutional point of view, from the legal point of view, in the treatment of domestic legislation and international regulations, and from the point of view in dealing with the historical events associated with the amnesty.

The criminal actions proposed by the Federal Prosecutor were also hampered by the judiciary under the pretext of time limitations (*prescrição* in portuguese) to prosecute the crimes and, therefore, there would be no legal basis to follow the actions. It is worth stressing how the time limitation concept took a content completely different from its originality. In Brazilian legislation, time limitation concept was from a guarantor to the impunity. From a concept that obliges the State to be diligent to prosecute crimes to an institute of procedural fraud by omission of obligatory acts.

Gomes Lund Case against the Federative Republic of Brazil makes the debate about amnesty and transitional justice in Brazil develop without these internal ties. The Inter-American Court of Human Rights has reiterated its jurisprudence to consider the amnesty law in Brazil to be unjustified as an act of self-protection and, as such, to grant immunity to state agents in crimes against humanity whose current existence of missing people crime in consummation, therefore, latent for the criminal prosecution.

The denial of justice of the Brazilian State is pending because of its failure to investigate the whereabouts of persons recognized as political disappeared, whose crimes they are victims remain in perpetuity, to prosecute and, eventually, to convict those involved.

In view of what has been arranged, despite the fact that Brazil has advanced in overcoming its dictatorial legacy, especially with regard to civil repair to victims and their families, it has not yet fulfilled the obligation to make enforced the right to truth, justice, not realizing the institutional changes.

5. Conclusions

From the conceptual model adopted, the material collected and the analysis performed, it is possible to state that: A. there is a civil society action, from organized groups, to guide subjects such as amnesty and torture; B. there is an individual repair mechanism for people persecuted for their political action against the dictatorship; C. there is diffuse repair of symbolic nature in homage to the fight against abuse regimes; D. there is a construction of truth with the version of the groups kept "silent" during the dictatorship; on the other hand; E. some



memory places remain non-memory, that is, not signaled, poorly signaled, or useless to their primary purpose; F. the judicialization of facts of humanity remains hampered in national jurisdiction; G. there were no measures of profound institutional changes in the Brazilian State.

Thus, the transition from authoritarianism of the dictatorship (1964-1985) to redemocratization in Brazil is partial, with significant gaps in terms of memory, justice, and institutional reforms.

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