XXV NATIONAL MEETING OF CONPEDI - BRASÍLIA/DF

ACCESS TO JUSTICE
II

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ACCESS TO JUSTICE II

Presentation

We bring to light the present collective work, composed of articles defended brilliantly, after rigorous and disputed selection, in the Working Group entitled "Access to Justice II", during the XXV CONPEDI/UnB National Meeting, held from 6 to 9 July 2016, in Brasília/DF, on the theme "Law and Inequalities: diagnoses and prospects for a fair Brazil".

It is with special joy that we state that the works presented are extremely relevant to research in law in Brazil, demonstrate remarkable technical rigor, sensitivity and originality, forwarded in a comprehensive and contemporary perspective of Access to Justice.

In fact, the theory of Access to Justice, as well as its application, especially the one aimed at the effectiveness of fundamental rights and the materialization of Justice, strengthens the development and construction of a more just and less unequal society.

Among the topics specifically addressed in this work, it is worth mentioning, access to justice and abuse of the right of action, obstacles and prospects for access to environmental justice, the potential of art. 334 of the CPC as a democratic strategy, the reformulation of the private space and public policies for adequate treatment of conflicts, restrictions and difficulties in access to justice, the role of the public defender on the subject, legal business, the CPC/15 and Access to Justice, "jus postulandi in Labor Justice", among others.

The present collective work demonstrates a lucid and enriching vision on Access to Justice, its problems and subtleties, its importance for democracy and for confronting inequalities, so it will certainly be vigorously accepted by the academic community.

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REPARATION FOR HUMAN RIGHTS VIOLATIONS: A CONCEPT IN DISPUTE IN THE BRAZILIAN POLITICAL TRANSITION

REPARATION FOR HUMAN RIGHTS VIOLATIONS: A CONCEPT IN DISPUTE IN THE BRAZILIAN POLITICAL TRANSITION

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Summary

Reparation is considered the structural axis of the Brazilian political transition. Despite being the most consolidated pillar, it is not immune to dispute over its concept. There is an intense social and political dispute over: Who can be the beneficiary of reparation? Why and how to make reparations? Who can be held accountable? The transitional justice agenda in Brazil has contributed to broadening the concept of reparation beyond the merely economic perspective, bringing it closer to the concept of comprehensive reparation, expanding material access to justice and strengthening the protection of human rights in Brazil.

Keywords: Justice, Transition, Reparation, Access, Dispute

Abstract/Resumen/Résumé

Reparation is considered the structural axis of the Brazilian political transition. Although it is the most consolidated pillar, it is not protected from dispute over its concept. There is an intense social and political dispute about: Who can be the beneficiary of a reparation? Why and how to repair? Who can be held accountable? The transitional justice agenda in Brazil contributes to expanding the concept of reparations beyond a purely economic perspective, bringing it closer to the concept of integral reparation, expanding material access to justice and strengthening the protection of human rights in the country.

Keywords/Palabras-claves/Mots-clés: Justicia, Transición, Reparación, acceso, disputa

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1. Initial considerations: how to repair a damage?

When the Courts are faced with a demand for reparations, and this happens every day, in the common justice system and in labor courts, they are compelled to admit that the legal categories, criteria and institutes seem insufficient to deal with the complexity of life. Or they reduce the issue to an economicist discussion about values and figures, in an attempt to escape the more arid debate that arises.

When talking about reparation, it is common to refer immediately to its economic dimension, often limiting it to this, as if reparation were synonymous with compensation. But the issue is much more complex.

How can the family of a worker killed in an accident at work be compensated? How can we compensate for the lack of financial contributions from this worker to support his family? How can we make reparation to that family, forever deprived of his company, of his presence?

How can we make up for a father, tormented by the disappearance of his daughter, deprived forever of her company, deprived of the grandchildren he could not have? How can we repair the years of anguish, dedicated to a tormenting search for scraps of information, for clues, for truth?

How to repair the damage caused by human rights violations? How to repair a violent change in the course of a life?

When we think about the institute of reparation, several essential questions arise for its conformation: why repair? Whom to repair? Who should be held responsible?

This paper aims to demonstrate, on the one hand, the complexity of the dimension of reparation for the violations committed during the last authoritarian regime and, on the other, and especially, the process of dispute existing over this concept in the Brazilian context of political transition. Finally, it aims to demonstrate how, alongside the existing dispute, the Brazilian judicialtransitional process and the claims of the victims, the protagonists of this process, have contributed to the broadening of the concept of reparation in Brazil and, thus, to the expansion of material access to justice.

2. (The concept(s) of reparation

If we analyze a case, like so many others that are judged daily by Brazilian courts, we will see that discussions about compensation are often limited to compensation for property damage and, at best, moral damages.

The courts recognize that it is a challenge to quantify the damage suffered, but often do not go beyond this finding, often limiting themselves to seeking the supposed and unattainable return to the *status quo ante*.

The field of transitional justice has a broader perspective on reparations and, for this construction, international human rights law plays a decisive role. According to Paul Van Zyl:

> Under international law, states have a duty to provide reparations to victims of gross human rights violations. Such reparations can take different forms, among which are material assistance (e.g. compensatory payments, pensions, scholarships and grants), psychological assistance (e.g. trauma counselling) and symbolic measures (e.g. monuments, memorials and national days of commemoration). Often, the formulation of a comprehensive reparations policy is both technically complex and politically delicate (2011, p. 52).

As an example of the different scope given to the institute of reparations, consider the judgment handed down by the Inter-American Court of Human Rights in the case of Gomes Lund et al. *v.* Brazil, dated November 24, 2010. [1]The chapter of the sentence dedicated to reparations is divided into the following parts:

> **XI - REPARATIONS**
> **(Application of Article 63.1 of the Convention)**
> **A. Injured party**
> **B. Obligations to investigate, prosecute and, where appropriate, punish those responsible and to determine the whereabouts of victims**
> **C. Other rehabilitation measures, satisfaction and guarantees of non-repetition:**
>
> 1. Rehabilitation
>   i. Medical and psychological care
> 2. Satisfaction
>   i. Publications of the Sentence
>   ii. Public Act of Recognition of International Responsibility

[1] Available on the official website of the Inter-American Court of Human Rights: www.corteidh.or.cr.

iii. Day of the political disappeared in Brazil and memorial (rejected)

3. Guarantees of non-repetition

i. Human Rights Education in the Armed Forces

ii. Typification of the crime of enforced disappearance

iii. Access, systematization and publication of documents held by the State

iv. Creation of a Truth Commission

D. Indemnities, costs and expenses

1. Material damage
2. Immaterial Damage
3. Costs and expenses (original emphasis)

The Gomes Lund decision, as an example of the consolidated understanding of the Inter-American Court with respect to the obligation to make reparations, demonstrates, on the one hand, the breadth of the institution consolidated in the concept of comprehensive reparations and, on the other, the interrelationship between reparations and the measures related to the other dimensions of the justransitional process.

It is relevant to note that the first measure of reparation established in the sentence is the "obligation to investigate the facts, judge and, if appropriate, punish those responsible and determine the whereabouts of the victims", reinforcing the perception of justice as an important mechanism to repair the damage caused to the victims. In a similar vein, Paulo Abrão and Marcelo Torelly support the "importance of memory and justice as the ultimate mechanisms of reparation of damages towards non-repetition, in a vision that integrates the political dimensions and legal obligations that underpin transitional justice in Brazil in a harmonious whole" (2010, p. 28).

The creation of a Truth Commission is one of the guarantees of non-repetition, since recovering the truth about the violations that occurred is a very *effective* mechanism to prevent violations from happening again.

On the one hand, a concept of reparation handled by national courts, limited to the compensation of material and moral damages, and, on the other hand, the concept of comprehensive reparation, developed by the jurisprudence of the Inter-American System of Human Rights, claimed and consolidated in the field of transitional justice, according to which reparation can, and should, take various forms with a view to giving

account of the complexity of the obligations arising from the recognition of liability for rights violations and damage caused.

Between these two conceptions, there is a vast path and a vast space of social and political dispute about: who can be the beneficiary of reparation? what are the criteria for defining the list of victims to be repared? why and how to promote reparation? who can be considered responsible for the damage and the obligation to repair?

The present article provides examples of disputes fought on each of these aspects of reparation: to whom to repair? why and how to repair? who should repair?

3. Who should be compensated? The dispute over the concept of victim of rights violation and beneficiary of reparation

In addressing the topic of reparations, as one of the key elements of transitional justice, Van Zyl highlights that "the definition of victim status is a central issue in granting reparations" (2011, pp. 52 and 53) and details:

> It needs to be decided whether reparations will be directed only at victims of gross human rights violations, such as torture, killings and disappearances, or whether reparations should also be given to a broader class of victim, such as those who have suffered systematic racial discrimination or who have lost their land and property.

The relevance of this aspect is corroborated by the fact that the aforementioned chapter on reparations in the Gomes Lund decision begins by establishing in item "A" the parties considered to have been injured.

The dispute for the recognition of the responsibility of the Brazilian State and the victim status of people whose rights were violated during the Dictatorship has existed since the embryonic stage of Brazil's political transition process.

In effect, recognition of the list of victims murdered or disappeared by the authoritarian regime was the first major achievement of Law 9.140/95[2] and one of the first debates held within the Special Commission on Deaths and Disappearances (hereinafter CEMDP). This law recognized "persons who disappeared because of participation, or accusation of participation, in political activities, in the

[2] Law 9.140/95 is considered one of the milestones in the process of political transition in Brazil , especially because it recognized the objective responsibility of the Brazilian State for the deaths and disappearances of political opponents and, based on this responsibility, established the State's duty to compensate the families and locate the remains of the victims.

period from 2 September 1961 to 15 August 1979', contained in the list annexed to law (136 people originally[3]) and created the CEMDP, with the institutional mission, among others[4], to proceed with the recognition of other people as missing and dead (item I of Article 4).

A major challenge faced by family members, in addition to the search for documents and evidence to support administrative requests, concerned the struggle for a broad interpretation of which cases of deaths would be covered by the Law (art. 4, item I, a provision that established who could be considered a victim).

The definition of the scope of the interpretation of the phrase "in police or similar facilities" in art. 4, I, b, was decisive, for example, in the examination of the cases of Carlos Lamarca and Carlos Marighella, analyzed in the first year of the Commission's operation, since they had been assassinated outside police facilities.

The debate that was established took to the streets and brought to the fore important discussions about the basis and extent of the Brazilian State's responsibility for the deaths and disappearances[5]. The discussions even took over the media at the time [6](ZERO HORA, 1996).

Both cases were approved by the Special Commission and it was proven by the expert work that the scene of the deaths of Lamarca and Marighella had been set up, not corresponding to the real circumstances of the crime.

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[3] At the end of CEMDP's work, 357 reparations were recognized and granted. BRAZIL. Right to memory and truth. Brasília: Secretaria Especial de Direitos Humanos da Presidência da República, 2007.

[4] And also to: make efforts to locate the bodies of missing persons (art. 4, II) and issuing an opinion on applications for compensation formulated by family members (art. 4, III)

[5] "With the expression 'on police premises or similar', the legislator certainly wanted to refer much more to the situation or circumstance in which the death occurred than to the physical location of the event. Group created by the Brazilian Institute of Criminal Sciences and the Association of Judges for Democracy". "The *ratio essendi* of Law 9.140/95 is the Brazilian State's confession of, in a determined period, having acted against the Rule of Law. (...) As a corollary, there is the second *ratio*, namely, that the persons killed by the Brazilian State, when fighting against the State, did so while exercising their right to resist, precisely because the State acted outside the Rule of Law (...) If the thesis were to prevail [that the expression 'or similar' only covers the physical location 'prison or jail of any kind'], it would be admitting that the State only acted outside the Rule of Law in prisons. And, consequently, a contrario sensu, outside of police premises, or (sic) similar ones, it would have acted in accordance with the law." Opinion of the American Association of Jurists. Excerpted from: Cf. Blue Report 1996, 1997.

[6]Jornal Zero Hora, Porto Alegre, October 2, 1996. Document extracted from the Personal collection of documents of Iara Xavier and Gilney Viana.

The Commission's decision was met with a strong reaction from sectors of the This was exemplified by the filing of an appeal signed by the presidents of the Military, Naval and Aeronautics Clubs, which pleaded for the cancellation of all the acts practiced by the Commission, on the grounds of alleged unconstitutionality[7]; or even the burning of the records of Carlos Lamarca's passage through the Military School [8](ZERO HORA, 1996).

With the judgment of these cases, the interpretation of the law was opened to include all those killed while in police custody, which was another great victory for family members and entities, parliamentarians and jurists. The dispute culminated in the approval of Law nº 10.875/2004, which amended Law nº 9.140/95 to include the hypotheses foreseen in lines b, c and d [9].

As mentioned, "later amendments expanded the scope of this legislation [Law 9.140/95] and CEMDP", however, notes the then Minister of Human Rights, Maria do Rosário (VIANA, 2013. p. 6) the amendments were not sufficient "to understand the complexity of political repression in the countryside and include hundreds of cases of dead and disappeared peasants in the Transitional Justice rights defined in these laws".

The reference to the social and political dispute over the recognition of the condition of victims of violations perpetrated during the Dictatorship could not fail to mention the exclusion of peasants and indigenous people from the rights of Transitional Justice, a situation that only began to be revealed through recent work developed by civil [10]society and later by the National Truth Commission.

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[7] Military Club Resource - Document extracted from the Iara Xavier and Gilney Viana's personal collection of documents.

[8]Jornal Zero Hora, Porto Alegre, October 2, 1996. Document extracted from the Personal collection of documents of Iara Xavier and Gilney Viana.

[9] Art. 4 (...) I - proceed to the recognition of missing persons: a) not listed in Annex I of this Law; b) who, because they participated, or were accused of participating, in political activities, died of unnatural causes, in police or similar facilities; c) who died as a result of police repression suffered in public demonstrations or in armed conflicts with agents of public power; d) who died as a result of suicide committed when about to be arrested or as a result of psychological sequelae resulting from acts of torture practiced by agents of public power.

[10] We highlight the research developed by Gilney Viana and presented at the Thematic Forum of Porto Alegre on 27/01/2012, consolidated later in the book "Campesinos Motos e Desaparecidos: excluídos da Justiça de Transição". Also of note is the work done by the Peasant Truth Commission, whose final report on rights violations in the countryside (1946-1988) was concluded in December 2014 and is available at: http://r1.ufrrj.br/cpda/wp-content/uploads/2015/01/aqui3.pdf and the research done by the Peasant Memory Project, of the Political Anthropology Center of the National Museum of the UFRJ, resulting in the book *Retrato da repressão política no Campo. Brazil 1962 -1988. Campesinos Torturados, Mortados e Desaparecidos,* written by Ana Carneiro and Marta Cioccari.

As for the peasants, the book "Campesinos Motos e Desaparecidos: excluídos da Justiça de Transição" brings revealing data about the deaths and disappearances of peasants and supporters during the period from September 2, 1961 to October 5, 1988, encompassed by Law 9140/95, as amended by Law 10.326/2002:

> "It was found that 602 cases of peasant unionists, leaders of collective struggles and individual workers and their lawyer and religious supporters could have been examined and eventually recognized by CEMDP, but were not, thus being excluded from the right to memory and truth, from recognition of the State's responsibility and from moral and material reparation to their families. Complementary information would make it possible to examine all of the 1,196 cases of deaths and forced disappearances of peasants and their supporters (...)" (VIANA, 2013, P.13)

Similarly, the violence perpetrated during the Civil Military Dictatorship by agents of the Brazilian State or private agents against indigenous peoples has not been officially recognised by the Brazilian State, except through the activities of the National Truth Commission, which created a Working Group specifically to analyse violations of indigenous [11]peoples' rights.

The CNV's Final Report[12] records the advances made with regard to the recognition of the violations suffered by peasants and indigenous people:

> The NTC had the opportunity to go further, in two senses. First, in carrying out its work between 2012 and 2014, the NTC examined the cases of death and forced disappearance in accordance with treaties and decisions of international bodies after Law No. 9,140/1995 - which led it to classify some cases of death, thus considered by CEMDP, as cases of disappearance. Second, by not requiring proof that the dead and disappeared had participated in or been accused of participating in political activities, the CNV's assessment allowed for a qualitative and quantitative increase in the verification of those who died and disappeared in the period between 1964 and 1988. In **this sense, the work of the NTC was able to bring justice to rural workers, indigenous people and clerics murdered during the**

[11] Another important document that has given visibility to the violations suffered by indigenous peoples is the Fi gueiredo Report, an investigation into the violence perpetrated against those peoples that was drawn up in 1967 during the dictatorship and that resurfaced in April 2013 to serve as the basis for the activities of the National Truth Commission.

[12] Available at: http://www.cnv.gov.br/index.php/outros -destaques/574-conhecheca-e-access-o- relatorio-final-da-cnv.

dictatorship, which as a rule could not be appreciated by CEMDP.
(BRAZIL, 2014, pp. 26 and 27)

Another episode from Brazil's political transition process that demonstrates the dispute over the concept of victim of violations and consequent recognition of the duty to repair is the case of the former employees of the Arsenal of the Navy in Rio de Janeiro.

Dismissed due to their participation in the strike movement in 1985, the workers of the Navy Arsenal - ironworkers, welders, tinkerers, carpenters, electricians, mechanics and other similar professions - filed individual Amnesty Petitions seeking recognition of the condition of political amnesty, economic compensation of an indemnity nature. The 190 applications were favorably judged in a thematic and collective session, held during the 38th Amnesty Caravan, at the Brazilian Bar Association - Rio de Janeiro Section, on May 29, 2010.

Despite the robust grounds of the decision rendered by the Plenary of the Commission, subsequently, on April 1, 2013, the Ordinances of the Minister of Justice were published rejecting all the requests.

These are the only cases in which the Amnesty Commission's decision was not ratified by the Minister of Justice. The rejection was based on an AGU[13] opinion, according to which: although the political persecution perpetrated against the workers was recognized, the Navy Arsenal was an agency of the Direct Administration and, pursuant to paragraph 5 of article 8 of the Transitory Constitutional Provisions Act [14](hereinafter referred to as ADCT), the recognition of political amnesty to employees linked to entities of the Direct Administration would be prohibited.

The established discussion revolves around the definition of the legal nature of the Navy Arsenal and, above all, the interpretation of the expression "except in Military Ministries", contained in §5, of art. 8, of ADCT. The established controversy concerns, ultimately, the extent of the Brazilian State's duty to repair the

[13] Opinion No. 002/2013/CGA/CGU/AGU, in the records of MS No. 20.367/DF, in progress before the Superior Court of Justice.

[14] 5. The amnesty granted under the terms of this Article shall apply to civil servants and to employees at all levels of government or in their foundations, public companies or mixed companies under state control, except for military ministries, who have been punished or dismissed for professional activities interrupted as a result of a decision made by their employees, as well as as as a result of Decree-law no. 1632 of 4 August 1978, or for exclusively political reasons, the readmission of those affected being assured as from 1979, subject to the provisions of § 1.

damage caused by political persecution and, at length, on who may be considered a victim of political persecution and thus a beneficiary of redress.

On the one hand, we have the restrictive and discriminatory interpretation of the ADCT, given by the AGU and endorsed by the Minister of Justice. On the other hand, there is the interpretation of the constitutional provision given by the Amnesty Commission, as outlined in the vote of Reporting Councilor Prudente José Silveira Mello:

> "Paragraph 5 of art. 8 seeks to ensure the guarantee of reinstatement. Thus, the purpose of the rule is to (re)integrate socially through the right to amnesty ALL those who were dismissed or harmed by arbitrary acts of the State itself, ensuring the "readmission of those affected as of 1979". Therefore, the "exception in the Military Ministries" refers to the situation of loss of employment or function prior to 1979, making it impossible to apply the readmission institute to public servants and employees under the control of the Military Ministries. However, after this timeframe, ALL are under its protection.
>
> It is important to realize that even in the face of the impossibility of applying the readmission institute to this portion of public servants and employees under military command before 1979, the Constitution does not place them in a situation of negative discrimination, since they may have access to the amnesty, having economic compensation as reparation" [15]

It is interesting to note that the Brazilian reparation system, established after the enactment of the 1988 Constitution (art. 8 of ADCT) and regulated by Law 10.559/2001, is broad and is based primarily on proof of political persecution. Once the persecution is proven, the citizen is entitled to recognition of his amnesty status and compensation for damages suffered. Once this aspect has been overcome, the detailed discussion consists of knowing the form of reparation applicable to each case, but not the right to reparation itself.

Given the characteristics of the Brazilian reparation system, the decision of the Minister of Justice and the reasons behind it draw even more attention, since it sustains a discriminatory interpretation of the right to reparation, denying recognition of the condition of victim to persons proven to have been persecuted for political motivations.

[15] Vote of the Reporting Councilor, contained in the records of Amnesty Application no. 2005.01.51405, pages 12 and 13.

The Ordinances that denied the Amnesty Requests were the object of two Writs of Mandamus filed with the Superior Court of Justice against the Minister of Justice[16] in 2012. The grounds of the constitutional remedy are, in general terms: (i) the illegal legal classification of the Navy Arsenal of Rio de Janeiro as a direct administration body, when it is a public company that exercises economic activity; (ii) the insubstantiality of the discriminatory interpretation granted to §5, of art. 8, of ADCT, which intends to exclude persons, admittedly persecuted by arbitrary acts of the State, from the right to reparation. The case awaits review by the Judiciary.

4. Why to repair and how to repair? The "hermeneutic turn" of the Amnesty Commission and the struggle for the re-appropriation and re-signification of amnesty in Brazil

Unlike other Latin American countries, amnesty in Brazil is the result of social demands (ABRÃO; TORELLY, 2010). Its origin can be traced back to the movement of family members of prisoners and disappeared persons, the articulation of these family members in the women's movement and, later, in the Brazilian Amnesty Committees, and the support network formed with institutions such as the OAB, the Catholic Church, the Brazilian Press Association, and the National Conference of Bishops of Brazil (BRASIL, 2010. pp. 58-68).

The amnesty won was not the "broad, general and unrestricted amnesty" demanded in the streets, but it was the amnesty that was managed to be approved in the context of a dictatorship still in force, with a legislative power full of bionic parliamentarians, in a process of opening controlled by the authoritarian regime itself.

Despite its limitations, with Law 6.683/1979, some political prisoners were able to leave prison, and clandestine, exiled and banned persons were able to return to social life in Brazil. As Abrão and Torelly point out, even without the approval of the desired project, "Brazilian society legitimately claimed this achievement for itself and, to this day, reverberates the memory of its victorious process of winning amnesty in the streets" (2010, p. 32).

The social perception of amnesty and the rights and duties arising from the political transition process is not unison. There is a clear dispute in the narrative about what

[16] MS No. 20.367/DF, reported by Justice Mauro Campbell, awaiting judgment by the 1st Section of the Superior Court of Justice.

the authoritarian regime established in Brazil since 1964, as well as the obligations arising from the violations of rights perpetrated in that period.

The advent of Law 10.559/2002, which created the Amnesty Commission and provided for the responsibility of the State for all acts of exception (beyond the deaths and forced disappearances, recognized by Law 9.140), was very important to change the "scenario of low amplitude of demands for transitional justice" that existed until then, since, for many years, this theme was restricted to the movements of family members of the dead and disappeared politicians, losing sight of "a broad social awareness of the harmful effects of the broader persecutory forms undertaken by the dictatorship" (2010, p. 30).

The work of the Amnesty Commission throughout its fifteen years of operation has contributed to the political affirmation of amnesty as a social achievement and the declaration of political amnesty as an integral part of the reparation measures for the damages and violations perpetrated by the Brazilian State.

This great democratic achievement is not unanimously welcomed by Brazilian society. There are conservative sectors that, in the words of these authors, "do not accept amnesty and reparation as legitimate institutes" (2010, pp. 27 and 28), strengthening the common sense that associates amnesty with its etymological sense of forgetfulness, distancing it from the historical process and the social struggle that precedes it and explains it. In this sense:

> Amnesty as forgetfulness is only affirmed by the judiciary, which, by nature, is the most conservative power in the republic, and by sectors of academia that have difficulty dialoguing with concrete reality, fixing themselves to watertight concepts and, of course, finally, by those more reactionary sectors of politicized society, that simply do not accept the amnesty as a democratic achievement and ideologically do not admit the duty of reparation to the political persecuted or consider it undue, because they still dialogue with an undemocratic idea of public space that confuses "resistance" with "terrorism" (2010, p.34).

Paulo Abrão and Marcelo Torelly note that the "fusion of erroneous academic and political readings has served to criticize in a generic way the reparation process in Brazil-both the one promoted by CEMDP and the Amnesty Commission" (2010, p. 34).

The process of political transition from an authoritarian regime to democracy finds and will always find obstacles and supporters within the same society, however, the authors warn that this context was causing "a weakening of the capacity to mobilize political resources to sustain the continuity of the transitional process itself" (ABRÃO; TORELLY, 2010, p. 34).

In this context, aware of the important role it plays in the Brazilian transition process, the Amnesty Commission promoted a reorganization of its strategic actions for the period 2007-2010, with a view to confronting and overcoming common sense regarding the issue of reparation and political amnesty and with the aim of advancing in the understanding of its institutional role and the concept of reparation practiced in Brazil. It was the so-called "hermeneutic turn" adopted by the Amnesty Commission, with a view to promoting a re-signification of the Brazilian transitional process (2010, p. 34).

The model designed by the Law that established the Commission provides for an individualized practice of reparation, so much so that the procedure foreseen presupposes the presentation of an individualized Administrative Application through which recognition of the condition of political amnesty is requested.

This hermeneutic turn brought about the following reflection: the moral reparation for damages committed in a public manner, with a broad impact on the social environment of the politically persecuted, should, in a proportional manner, also be practiced publicly, reinforcing its collective dimension, since the reparation of damages goes far beyond the parties of the administrative proceeding filed. A public and solemn apology made by a representative of the State has a healing role for those directly affected, but also for society as a whole, insofar as it implies in the social reintegration of people who, at a given historical moment, were silenced, unwanted and violated.

This "hermeneutical turn" led to the broadening of the concept of reparation in the Amnesty Commission, moving it away from the simplified structure of reparation for material damage and expanding the dimension of moral reparation, bringing the Commission's practice closer to the concept of full reparation or the "more comprehensive concept of reparation as a set of measures of compensation, restitution to victims, public satisfaction and non-repetition, i.e., that meets the retributive economic dimension, but also heals the moral offense and prevents society from repeating violations" (2010, p. 50).

Practical examples of this hermeneutic turn in the Commission's activities are: (i) the strengthening of moral reparation, as a step prior to material reparation, with solemn declaration of the condition of political amnesty and official apology by the Brazilian State; (ii) public affirmation of amnesty as recognition; (iii) strengthening of the collective dimension of moral reparation through the holding of public and thematic sessions of the Amnesty Commission; (iv) creation of the Amnesty Caravans and the Political Amnesty Memorial in Brazil.

All these initiatives aim to promote the reappropriation of the meaning of political amnesty as the fruit of social struggle, to emphatically affirm amnesty as recognition of the right of resistance and "of the wrongs committed by the state against its fellow citizens" (2010, p. 45).

This process of re-signifying amnesty promoted by the Amnesty Commission, in the context of strengthening the transitional justice agenda in Brazil, did not take place with impunity. It was and is the target of several attacks on the acts and functioning of the Commission, such as judicial challenges to its decisions.

In this sense, it is important to point out that the disputes surrounding the concept of reparation are not only about the broadening of its concept. There are ongoing legal actions challenging the legality of the Commission's actions.

Two cases are emblematic of the process of judicialization of reparation claims, which has caused the Amnesty Commission so much concern. The first is the lawsuit filed by the Military Club to annul the decree of the Minister of Justice of 2007, which granted Carlos Lamarca the title of *post-mortem* political amnesty, with promotion to the rank of colonel and brigade general's pay and economic reparation in favor of his family members. [17]The action was upheld by the trial court and determined that the family members should reimburse the public coffers for the amounts received.

In this case, the legality of the regulation of art. 8 of ADCT undertaken by Law 10.559/2002 is questioned, as well as the alleged impossibility of ordinary legislation broadening the scope of political amnesty. The case is awaiting judgment of the appeal filed by the family.

[17] Amnesty Request No. 2006.0155584 and Case No. 0018466 -29.2007.4.02.5101, filed in 2007 by Mr. João Henrique Nascimento de Freitas against the President of the Amnesty Commission and family members of Carlos Lamarca, beneficiaries of the political amnesty granted.

This decision provoked a manifestation of the Amnesty Commission that stated:

> The decision in this case jeopardises the reconciliation effort and the progressive treatment built up over 30 years by successive democratic governments of the authoritarian legacies of the military dictatorship and of the remaining unresolved issues of the democratic transition. [18]

Another emblematic case that reflects the social and political dispute that still exists over reparation and the transitional process as a whole is the popular action[19] brought against the President of the Amnesty Commission and 44 (forty-four) peasants from the Araguaia region whose applications for amnesty had been judged and granted during the Amnesty Caravan that took place in the region. This action, which sought the annulment of the administrative acts of amnesty, had an injunction granted, suspending for more than a year "the effects of the administrative acts that granted political amnesty to 44 peasants from the Araguaia region", preventing the peasants from receiving material compensation. This action was extinguished without judgment on the merits, thus restoring the compensation granted.

It is important to note that the two examples cited go against the effort being made by the Amnesty Commission to broaden the spectrum of moral reparation, since judicial decisions, on the merits or in limine, that annul or suspend the effects of granting amnesty contradict the moral and symbolic reparation made by the Commission, undoing the Commission's work of giving new meaning to the past and allowing the amnesty holder to rebuild their sense of belonging to the social and political community.

The Amnesty Commission has played a fundamental role in the political affirmation of amnesty as an achievement of Brazilian society, as well as its central role in the context of national political transition. At the same time, the examples cited demonstrate that the Commission is inserted in a context of strong and current tensions existing in the Brazilian state and society.

5. Who should make amends? What about corporate accountability initiatives

[18] Available at: http://www.conjur.com.br/2015-mai-17/juiz-anula-anistia-carlos-lamarca-resarcimento-erario.

[19] Filed under number 0015245-67.2009.4.02.5101, in progress in the Federal Justice of Rio de Janeiro, also filed in 2009 by Mr. João Henrique Nascimento de Freitas .

Finally the dispute over the concept of reparation also involves the recipients of the obligations to repair.

Reflection and research on civilian participation in the establishment, support and operation of the dictatorial regime established in Brazil is still rudimentary. Nevertheless, what is known is already sufficient for the recently promoted change in the nomenclature from "military dictatorship" to "civil military dictatorship.

Eneá de Stutz (2014, p 119) states in this regard that:

> With the installation of the National Truth Commission and a series of national debates around the Exection period in Brazil provoked by different instruments, such as documentaries, films and texts, some specific information began to emerge. Thus it is that the documentary *Cidadão Boilesen* relates the fundamental participation of a civilian, the entrepreneur Henning Albert Boilesen, in the creation of the Bandeirantes Operation (OBAN), as well as in its operation. OBAN was a torture center in São Paulo, and many times the entrepreneur Boilesen was present and active, according to the testimony of public agents who worked there, other businessmen and people tortured there.
> The documentary also describes the collection of funds among the São Paulo business sector to finance repression and torture, as well as the use of vehicles from different companies in the kidnapping and murder of citizens opposing the regime. It is noteworthy that after the release of the documentary, there was no denial on the part of the businessmen and/or companies mentioned.

It is important to emphasize that it was and still is a great achievement to achieve national and international recognition of the Brazilian State's obligations towards victims of violations.

Currently, there are initiatives that intend to advance even more in the aspect of attribution of responsibilities and the most emblematic example is the representation to the MPF through which the Workers Forum for Truth, Justice and Reparation [20]denounces Volkswagen for its complicity with the State in serious human rights violations committed during the dictatorial period from 1964 to 1985.

Through this denunciation, the company's responsibility in human rights violations committed during the dictatorial regime is being investigated. The complaint includes

[20] This Forum brings together activists and workers from entities and trade union centrals participating in the Working Group Dictatorship and Repression of Workers, Workers and the Trade Union Movement, of the now defunct National Truth Commission. The complaint was filed with the MPF in September 2015.

conclusive information on the collaboration of this company with the institutionalization of repression, through the donation of materials and necessary structures, such as the provision of cars for Operação Bandeirantes - OBAN, precursor of DOI- CODIs.

This is an innovative initiative in the Brazilian transitional context, since it advances the establishment of responsibility beyond the State, with no judicial developments yet. Similar initiatives are being developed by the organized labor movement in relation to companies such as Embraer and Petrobras.

6. Final considerations

It is widely known that the Brazilian political transition process has reparation as its structuring axis. On the one hand, it is important to highlight that the transition agenda is not restricted to reparation measures and, on the other hand, to emphasize, from the information provided in the text, that the centrality of the Brazilian transition in the pillar of reparation did not prevent the emergence of social tensions typical of political transition processes. Such tensions exist and come to the fore in the disputes over the scope of its concept.

By way of conclusion, it is important to emphasize, in the wake of the considerations made by Paulo Abrão and Torelly (2010, p. 53) in a study widely cited in this article, that the existence of public debate on reparation for the damage caused by crimes perpetrated during the dictatorship, whether in the sense of expanding or restricting its concept and practice, constitutes, in itself, a major advance in our society's political transition towards the strengthening of democracy.

The Brazilian State's difficulties in incorporating a broader concept of reparation are reflected in its compliance with the Gomes Lund et al. *v.* Brazil judgment, in which practically all the reparations were met, while the other measures of rehabilitation, satisfaction and guarantee of non-repetition were not met, along with the obligations to investigate and punish those responsible, all of which are integral parts of a broader concept of the obligation to repair.

In the context of political transition, the broadening of this concept has contributed to the expansion of material access to justice, surpassing, on many occasions, even the legal provisions or the inaugural perception of the institute of political amnesty.

Furthermore, the broadening of the concept of reparation in the Brazilian transitional justice process has contributed to the expansion of the concept of reparation in the most diverse forms of human rights violations and in the various dimensions of this institute: recipients of reparation; measures of reparation and those responsible for reparation.

In other words, the broadening of this concept, largely driven by the demands of the transitional justice agenda, has spilled over from the concept of reparation as a whole, beyond the demands arising from the rights violations that occurred during the civil military dictatorship. This leads to expanded material access to justice and increased possibilities for the protection of human rights as a whole.

Pertinent, in this sense, is the position of Paige Arthur who, in surveying the conceptual history of transitional justice, demonstrates "how "transitions" have reconfigured human rights" (ARTHUR, 2011).

The expansion of the conception of reparation measures contributes to the fact that lawsuits such as the one filed by Congresswoman Maria do Rosário against Congressman Jair Bolsonaro for [21]offenses committed by him are granted to set more extensive reparation measures, such as public retraction, publication of the retraction in newspapers of wide circulation as well as on social networks of the Congressman.

The public debate on reparations promoted by the transitional justice agenda contributes to preparing the justice system to accommodate more complex demands for reparations for damages resulting from human rights violations.

Similarly, the innovations brought by the transitional justice agenda contribute to the maturing of the answer to the question: who can be held accountable for human rights violations? This is very relevant for the promotion and protection of human rights in Brazil. The innovations brought by the transitional justice agenda, also in this aspect, prepare our justice system for deeper discussions on the responsibility of corporations for human rights violations.

[21] Tombined under number 2014011197596-2, the action is before the Court of Justice of the Federal District and Territories.

It is pertinent to note that the complaint against Volskwagem was filed in September 2015, with extensive media coverage, and a few months later, in November of the same year, the biggest environmental accident in the history of Brazil occurred, the rupture of the Mariana dam, which has sparked public debate on the responsibility of Vale do Rio Doce and Samarco for what happened, what rights should be ensured to the victims and the extent of their responsibility. The transitional justice agenda contributing to the improvement of human rights protection in Brazil.

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