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**Was the Brazilian Truth and Reconciliation Commission an Effective
Tool in Dealing with the Past?**

Dissertação com vista à obtenção do
grau de Mestre em Direito Internacional
e Europeu.

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Junho 2018



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2010

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Signature

Lisboa, 15th June 2018

I – Acknowledgments

First and foremost, I would like to thank my parents, who are the most important people in my life. Without them, nothing that I achieved would be possible. They are my biggest inspiration, the kindest and most thoughtful people in the world and also the reason that I still go on. No matter what the challenges are, everything is possible if I believe on what they taught me.

I also thank my friends, for giving me strength and courage. You are my family too, the ones who can lift me up even in my darkest times. I love you all so much, that sometimes I cannot handle all these feelings and so they always come through my eyes, like a river. And my boyfriend, who sometimes gets on my nerves, but is always giving his hardest to be a better person and to make me happy. You inspire me to achieve what I think is impossible. And I also thank my study group, you were essential when I could not even write one single page.

I thank my supervisor, Professor Doctor Jeremy Julian Sarkin, who always has a nice smile and inspires me since my first class at Nova Law School. Thank you for being patient and always having the most important critics that I needed to conclude this work successfully

II- Dedication

This is dedicated to that little child, who always dreamt of studying abroad. Never give up on your dreams, and do not listen to those demons on your head. You can be amazing, you just have to do your best.

III – ABSTRACT

For the past three decades, truth commissions have attracted wide interest among scholars, as many of them have focused on researching, analysing, criticising and publishing studies about truth commissions around the world. But, the Brazilian truth and reconciliation commission, however, is yet an unknown ground with very few publications on its work. And as Brazilian's truth commission was established in 2011 and its final reports released in 2014. This research has the objective to investigate the proceedings of the Brazilian truth and reconciliation commission, its components, research methods, its purpose and how much reconciliation was achieved, together with the consequences of its results, and how they were handled by Brazil's legal System. Using qualitative data and bibliography research, analysing the reports and all the bibliography that was released using them as a basis. This thesis has as its main goal, to give an international approach on analysing Brazil's Truth Commission and the impact of its work on Transitional Justice.

IV – RESUMO

Nas últimas três décadas, comissões da verdade vem atraindo um grande interesse a volta dos acadêmicos, já que muitos deles tem focado em produzir pesquisas, analisar, criticar e publicar estudos sobre as comissões da verdade pelo mundo. Mas, a comissão da verdade Brasileira é ainda um território com poucos estudos e publicações sobre o seu trabalho. Por vez que a comissão da verdade Brasileira foi formada em 2011 e seu relatório final foi publicado em 2014. Este estudo tem o objetivo de investigar os procedimentos da comissão da verdade Brasileira, seus componentes, métodos de pesquisa e investigação, seus objetivos e quanta reconciliação foi alcançada, junto de suas consequências, resultados e como eles foram aceitos pelo sistema judiciário Brasileiro. Utilizando os métodos qualitativos e pesquisas bibliográficas, analisando os relatórios e toda a bibliografia que foi lançada com base nos seus processos. Esta dissertação de mestrado tem como principal objetivo, dar uma visão internacional na análise da comissão da verdade Brasileira, assim como o impacto do seu trabalho na Justiça de Transição.

V – Table of Contents

1- Introduction.....	1
2 - The Evolution of Transitional Justice	5
2.1 - The Phases of Transitional Justice evolution.....	6
2.2 - The Tools of Transitional Justice.	11
2.3 - Healing with Transitional Justice.....	15
3- Background on Truth Commissions.....	19
3.1- Historical changes in Truth Commissions through the decades.....	22
3.2 - How are truth commissions formed?.....	26
3.3 - The Importance of the Truth.	28
4- The history of Human rights abuses in Brazil.....	32
4.1 - Human Rights abuses in Brazil, a brief History of social-economical and political aspects.....	34
4.2- 32 years of silence.	41
4.3- Starting to heal, the road to accountability.....	47
5- Brazil's Truth Commission (CNV).....	52
5.1- The CNV's structure.....	54
5.1.1 - Objective, powers and mandate.....	54
5.1.2- Staffing.....	57
5.1.3- Time period for investigation.	60
5.1.4 - transparency and access to information.....	61
5.1.5- Final Report.....	64
5.1.6- Recommendations.....	67
5.2- The process of investigation.....	74
5.2.1- The role of victims and perpetrators on the process of investigation	77
5.3- The CNV's proceedings and their importance in tracing its effectiveness to deal with the past.	83
6- Impact of the TRC;	87
6.1- The Parameters to establish the analysis;.....	88
6.2- Direct Political impact.....	89
6.2.1 - The Direct Political impact of the CNV.....	90
6.3 - Indirect Political impact through civil society mobilisation.....	92
6.3.1 - Indirect political impact of the CNV.....	93
6.4 - Vetting.....	93
6.4.1- The CNV and the process of Vetting	94
6.5- Delegitimation.....	94
6.5.1- The delegitimizing effect of the CNV.....	95
6.6- Reconciliation through consensus	96
6.6.1- The CNV's reconciliation through consensus.....	98
6.7- Impact on Social norms.....	98
6.7.1 - The CNV's impact on social norms.....	99
6.8- Positive judicial impact	100
6.8.1 - The CNV's judicial impact.....	102
6.9 – The CNV's Overall Impact.....	103
7- Conclusion.....	105
8 - References	110

1- Introduction.

For the past three decades, truth commissions - one of the major policy measures created to deal with past human rights violations in transitional and post-conflict societies - have attracted wide interest among social scientists and moral, legal, and political philosophers.¹ Many scholars have focused on researching, analysing, criticising and publishing studies about truth commissions around the world. The Brazilian truth commission, however, is yet an unknown ground with very few publications on its work.

It has been almost seven years since the creation of the Brazilian *Comissão Nacional da Verdade* (CNV) [National Truth Commission], the first official truth commission established in Brazil through the law 12.528, on 12 November 2011.² This transitional justice tool, created as an independent body³, was meant to deal with the scars of the past by investigating all human rights abuses that occurred from 1946 to 1988, inside and outside national territory. But to what extent does the Brazilian example contribute to the broader picture as a transitional justice tool? Did the CNV achieve its purposes? What can be learned with the experience left by the commission's work?

This research will give more visibility to the CNV's proceedings, as well as serving to achieve some of the purposes of transitional justice, that is, to build information and expertise upon the procedures of Truth Commissions, creating a network and bibliography for the future.

In Brazil's case, the scars that were left behind on the transition to democracy were never appropriately treated: victims were muted by laws and political schemes that stopped accountability of past human rights abuses, as the transition caused impunity and did not allow any official

¹ USAMI, Makoto – Defining Truth Commission, 2016, p. 56.

² Lei nº 12.528, de 18 de Novembro de 2011, Cria a Comissão Nacional da Verdade.

³ BAKINER, Onur – Truth Commissions: Memory, Power, and Legitimacy, 2016, p. 24-26.

investigations of massive human rights abuses for almost 32 years,⁴ until the establishment of the CNV.

Therefore, the creation of the CNV raised many questions about its effectiveness in dealing with the past: Why did Brazil need a truth commission? Why was it formed so late? How did the truth commission's impact change the mindset of society about its own past? Were the impacts of the truth commission effective enough to achieve the objectives traced in its creation? In order to achieve the main goal of this paper - which is to give an international approach on examining Brazil's Truth Commission and its impact on transitional justice - these and other questions were answered using qualitative data and bibliography research, in addition to analysing the reports and bibliography based on it.

This paper is structured to build up the study of the CNV from the roots of transitional justice towards the most recent impacts on Brazilian society. Chapter two starts with an explanation about the evolution of transitional justice in the world, going through the phases of transitional justice, naming its tools and analysing how they are important to achieve the goals of transition (or even in non-transitional backgrounds). The chapter then moves on to the historical context of its development and how this changed transitional justice through decades, finishing with its importance in the process of healing.

Chapter three focuses specifically on the role of truth commissions to accomplish the objectives traced by transitional justice, and to achieve the need of society as a whole. It focuses on bringing these tools closer to the reality of Latin-America, seeing the historical changes of truth-commissions, how they are formed and their main objectives, while explaining the importance of the truth in the healing process.

Chapter four goes through the human rights abuses in Brazil, starting with an analysis of the time frame aimed by the CNV, setting a socio-

⁴ SKIDMORE, Thomas E.; SILVA, Mário Salviano – Brasil: de castelo a Tancredo, 1964-1985, 1985.

economic, political and historical context, besides showing the international influence on the roots of the military dictatorship. This is followed by an explanation of why Brazil waited almost 32 years to start an official body to investigate the massive human rights abuses of the past; and the influence of the controversial amnesty law that emerged as an attempt to re-establish relations between the military officers and the regime opponents, in order to transition towards a new regime.⁵ The chapter ends with an analysis on the early works of the CNV and the unofficial truth bodies that investigated the human rights abuses, while the state was struggling to establish an official truth commission.

Chapter five is a technical analysis of the CNV itself. It includes the process of investigation: how it was structured; the report and the results that were set up in order to achieve the CNV's objectives; how they handled victims and perpetrators, and the role of society during the investigation, as well as the obstacles that were faced by the CNV in order to achieve its goals.

Chapter six, for its part, is a deep analysis of the effects of the truth commission. With a critical approach to the CNV, it takes into consideration the recommendations and the effectiveness of them by showing the reflexes of their work, legacy and applicability. Finally, this last chapter brings a critical response to the proceedings, as a way to reach a conclusion on whether the Brazilian Truth and Reconciliation Commission was in fact an effective tool in dealing with the past.

Just as “Remembering is not easy, but forgetting may be impossible.”⁶, the process of a truth commission is sensitive, since it works with memories of a horrendous past and touching the marks of those who survived. The importance of analysing the consequences, achievements

⁵ MEZAROBBA, Glenda – Um acerto de contas com o futuro: a anistia e suas conseqüências, um estudo do caso brasileiro, 2006, p.146-147.

⁶ HAYNER, Priscilla B – Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions, 2010, Pg 2.

and the technical procedures of these Transitional Justice Tools shows its fundamental value as we see the effects that it produces in our society.

2 - The Evolution of Transitional Justice.

Transitional justice became known and gained global significance as an umbrella term for approaches to deal with the past in the aftermath of violent conflict or dictatorial regimes close to the period known as the Cold War.⁷ The term was first coined in the early 1990's, by analysts whose attempts to construct a concept, and a field, drew in large part on the Latin-America struggle in the 1980s and 1990s to deal with the terrible human cost of repressive dictatorships.⁸ And it has since come to describe an ever expanding range of mechanisms and institutions, including: tribunals, truth commissions, memorial projects, reparations and the like to redress past wrongs, vindicate the dignity of victims and provide justice in times of transition.⁹

When we go through the origins of modern transitional justice, they are widely traced to the end of World War II, a period known as Phase I, or the post-war phase.¹⁰ Phase II begins with the end of the Cold War, known as the post-Cold War phase, as it is associated with the wave of democratic transitions and modernisation that began in 1989.¹¹ In this phase, global politics were characterised by an acceleration in conflict resolution and a persistent discourse of justice throughout law and society. And phase III of transitional justice is connected to the contemporary world, as it emerges in persistent conflicts where transitional justice seems to change from an exception to the norm, to become a model to the rule of law. Used as a remedy that expands the discourse of humanitarian justice, but also disseminates the legal system associated with generalised conflict and contributes to structure the law of terrorism.¹²

⁷ JONES, Briony; BERNATH, Julie – Resistance and transitional justice, 2017, p.1.

⁸ SKAAR, Elin; GARCÍA-GODOS, Jemima; COLLINS, Cath – Transitional justice in Latin America: the uneven road from impunity towards accountability, 2016.

⁹ BUCKLEY-ZISTEL, Susanne [et al] – Transitional Justice Theories, 2014, p.1.

¹⁰ TEITEL, Ruti G. – Globalizing Transitional Justice: Contemporary essays, 2015, p. 31, 39-40.

¹¹ TEITEL, R. G., 2015, p.50.

¹² TEITEL, R. G., 2015, p.50-52.

2.1 - The Phases of Transitional Justice evolution.

Phase I, or the post-war phase, encompasses the post-World War II Model of Justice through its most recognised symbol, the Allied-run Nuremberg Trials.¹³ However, history begins earlier in this same century, following World War I, since the central aim of justice in between wars was to delineate the parameters of a justifiable punishment by the international community.¹⁴ It was clear that the national trials in World War I, did not serve to deter future carnage, mainly because these transitional justice solutions clearly failed and are pointed out as the ones responsible for the hatred and economic frustration that fuelled Germany towards its place in World War II.¹⁵ This led transitional justice to, in post-World War II, begin by eschewing national prosecution, and instead, seek international criminal accountability for the Third Reich's leadership, as an evident critical response to the past.¹⁶

In this first phase, transitional justice aimed towards accountability, striking with an innovative approach (at the time), which was the application of an international criminal law beyond the barriers of state and reaching individuals.¹⁷ More so, the influence of the international community on the transitional justice tools came as a way to justify and legitimate the Allied intervention, creating an image of victor's justice on national level. And so, the international legal order held the Reich's higher echelons accountable for their persecutory policy and human rights offences, making clear that the Nuremberg prosecution was intended to legitimate the Allied intervention in the aftermath of world war II.¹⁸

¹³ On the history of those deliberations, see CONOT, Robert E. – Justice at Nuremberg, 1993.

¹⁴ TEITEL, R. G., 2015, p.51.

¹⁵ TEITEL, R. G., 2015, p.52.

¹⁶ CONOT, R. E., 1993.

¹⁷ TEITEL, R., 2015, p.52.

¹⁸ TEITEL, R., 2015, p.51.

The model of transitional justice featured in Phase I offered a very limited precedent, especially with the Cold War bifurcation, as it became clear that this model of transitional justice could not be used as a basis for further development on transition policy.¹⁹

Due to the trials, conventions and all the legacy left by this period, transitional justice expanded to transcend its operative action upon states. Leaving the narrowed scope of accountability to justify post-war intervention of international agents on a national level and heading towards a new Phase.²⁰

Phase II emerges in a period of political fragmentation and fast-paced democratisation, followed by many historical moments resulted from a giant wave of globalisation. One of these most crucial moments was the collapse of the Soviet Union – which caused the end of the bipolar balance of power – as well as the attendant proliferation of political democratisation and modernisation ushered in this post-Cold War phase.²¹

The withdrawal of Soviet-supported guerrilla forces in the late 1970s fuelled the end of military rule in South America,²² which began a wave of democratic transitions that are often described as isolated events that emerged as a result of civil wars and political conflict. However, these conflicts were actually fostered by international politics of power, resulted from the political equilibrium of the Cold War, that ended as a consequence of the Soviet collapse.²³

During the 1980s political transitions, questions on to what extent the Phase I models of transitional justice could be applied were raised, as new democracies started to emerge in South America leading towards new

¹⁹ LUBAN, David – Legal Modernism, 1994, p. 336.

²⁰ TEITEL, R., 2015, p.51.

²¹ See more in HUNTINGTON, Samuel P. – The third wave: Democratization in the late twentieth century, 1991.

²² See more about the Latin-American transitions in SCHMITTER, Phillippe C.; O'DONNELL, Guilherme; WHITEHEAD Laurence – Transitions from Authoritarian Rule: Latin America, 1986; and SKAAR, E.; GARCÍA-GODOS, J.; COLLINS, C., 2016.

²³ TEITEL, R., p.51.

politics of transition.²⁴ It was unclear if trials, like the ones created in the aftermath of World War II, could be successfully implemented to hold the dictatorships' leaders accountable.²⁵ Considering that these transitions were often seen as isolated cases, with no external influences, the successor regimes attempted to distinguish the context from that of international post-war justice and called for domestic trials²⁶, which is a major diversion from Phase I, where the international community played an important role on the political transitions. Nevertheless, despite the absence of international trials on Phase II, the transitional justice jurisprudence shows that international law ought to play an important role, contributing with an alternative source to guide the national trials in these transitional societies. This can be seen by the fact that, although Phase II relied on the national justice system as a critical approach to Phase I, this new model of transitional justice was eventually not appropriate for later globalised politics.²⁷ The national trials held on Phase II and the complexity of political transitions proved that transitional justice was not just an interventional tool, or an external factor that imposes criminal sanctions on Human Rights abuses, but a way to promote state building as a multi-factor way.

This multi-factor approach of transitional justice appears when we analyse it as a political process of negotiation between a set of diverse actors, including conflicting parties, mediators, newly constituted governments, donor countries, inter-governmental organisations, the civil society and victim groups.²⁸ More so, the transitional justice community spans over many disciplines as different as law, political science,

²⁴ For a leading advice of the Nuremberg Model, see Aryeh Neier – What Should Be Done About the Guilty? 1990.

²⁵ SIKKINK, Kathryn; LUTZ, Ellen – The justice cascade: the evolution and impact of foreign human rights trials in Latin America. In: *International Law and Society*, 2017 p. 333-339.

²⁶ SCHOULTZ, Lars – National Security and United States Policy Towards Latin America, 1986, p. 112-204.

²⁷ TEITEL, R. G., 2015, p. 57.

²⁸ JONES, B.; BERNATH, J., 2018, p.1.

sociology, psychology, anthropology and development studies, which differ significantly in perspectives and methodology.²⁹ Setting up these array of actors shows the complexity of transitional justice, and its possibilities on how to apply the measures needed for transitions and state building. For that reason, narrowing down transitional justice as a State-centred field based on how it was applied in Latin-America would be a wrong approach.

The concept of transitional justice appears to be continually in motion along with the changes in the political scenario across the decades. Comparing Phase I and II, parallel to the discussions of how transitional justice should or could be understood as a concept, has continuously been expanded to be applicable in contexts devoid of any form of political transition.³⁰

Furthermore, the internationalisation of transitional justice is evident from the new role played by international actors, such as UN agencies, international development partners and international NGOs. Instead of the role played in Phase I – criminal sanctions and accountability as a justification of intervention – they now provide technical advice and assistance to governments and others that attempt to create and implement a transitional justice solution.³¹ These international organisations play an important part, specially bringing expertise and a guideline on how to develop the procedures needed to achieve the objectives established.

The result of this new approach is that transitional justice is thus no longer viewed as an exemption task dealt by specialised departments in ‘extraordinary’ political circumstances, but rather tends to form an integrated part of good governance, human rights and peace building programmes in the developing countries in which these agencies work.³²

²⁹ BUCKLEY-ZISTEL, S., 2014, p.2.

³⁰ BUCKLEY-ZISTEL, S., 2014, p.3.

³¹ BUCKLEY-ZISTEL, S., 2014, p.107.

³² DUTHIE, R. – Toward a Development-sensitive Approach to Transitional Justice, 2008.

This new mindset of transitional justice was what set the basis of its crossover to Phase III.

Phase III can be characterised as a steady-state phase, as the new millennium appears to be associated with the expansion and normalisation of transitional justice.³³ It doesn't mean that transitional justice has become an everyday matter, but that it not only appears on a war aftermath or in strong political transitions. What was just a legal phenomenon that emerged in exceptional post-conflict transitions now seems to be a reflex of ordinary times.³⁴

Today, it is known that transitional justice achieved the role of a policy response designed to address human rights violations, together with new concepts and tools applied to realities that are not necessarily undergoing political transition.³⁵ The most recognisable symbol of this normalisation is the International Criminal Court (ICC), an international institution created at the end of the twentieth century that symbolises the consolidation of the Nuremberg model, through the creation of a permanent international entity, to prosecute crimes against humanity under international law.³⁶

The current normalisation of transitional justice takes form with the expansion of the law of war, as it battles with the enhancement of humanitarian law.³⁷ This tension between the law of war and humanitarian law brings out new dilemmas, as the law of war is used as a basis for intervention³⁸. These dilemmas are perpetuated through Phase III, where they shock with a new issue: terrorism.

Therefore, the expansion of the transitional justice discourse being applied to the issue of terrorism proves to be problematic, due to the

³³ TEITEL, R. G., 2015, p. 57.

³⁴ TEITEL, R. G., 2015, p. 58.

³⁵ JONES, B.; BERNATH, J., 2018, p.4.

³⁶ DUTHIE, R., 2008.

³⁷ HANSEN, Thomas Obel – The vertical and horizontal expansion of transitional justice, 2016.

³⁸ TEITEL, R., p.64.

inadequacy of analogies between terrorism and war or political crisis.³⁹ In Phase I and Phase II of transitional justice, the tools applied to transition tend to look backwards as a response to conflict that had come to an end. These measures aim to be reconstructive. Therefore, turning its application into a protective matter - as it is needed on a war against terrorism - is extremely problematic, especially because transitional justice is a response to past conflicts, and, consequently, it is difficult to adapt it to guarantee prospective security.⁴⁰

It's easy to spot a controversy over transitional justice, as it transitions toward the end of the twentieth century involved in a somewhat artificial zero sum and dichotomous framework that centred on a set of apparent foundational dilemmas and related binaries: "punishment versus impunity", "truth versus justice", "justice versus peace".⁴¹ These paradigms enter into a debate on the role of the state loomed large, with the problem of justice today revolving almost exclusively around state actors and related institutions and purposes.⁴² Discussing the role of the state and its responsibilities as a successor regime ought to respond to abuses that were perpetrated against its own citizens.

2.2 - The Tools of Transitional Justice.

Transitional justice turned out as a complex arrange of tools and peace-building processes that was commonly associated with justice-seeking for exceptional times, but, over time, its focus has been expanded to include a much broader range of mechanisms, goals and inquiries across a range of disciplines that are not necessarily applied only to states in transition.⁴³ Along with the expansion and institutionalisation of the field,

³⁹ TEITEL, Ruti G. Transitional justice in a new era. *Fordham Int'l LJ*, 2002, p. 904.

⁴⁰ TEITEL, R. G., 2015, p. 65.

⁴¹ HAZAN, Pierre – *Judging Warm Judging History: Behing Truth and Reconciliation*, 2010.

⁴² TEITEL, R. G., 2015, p. XIII.

⁴³ BELL, Christine – *Transitional justice, interdisciplinarity and the state of the 'field' or 'non-field'*. *International Journal of Transitional Justice*, 2009.

critical scholarship has increasingly highlighted the ways in which transitional justice processes are also inherently political.⁴⁴ It is not, however, only based on a political decision, neither only played by actors linked to the state. Transitional justice moves through a diverse array of multiple actors.

Transitional justice was soon expanded beyond its original realm of punitive understandings that started on Phase I.⁴⁵ Sparking a discussion on how it can be best connected to development, and calling for a further expansion, blurs the boundaries of the initial concept, which leads to important developments and at the same time poses new theoretical challenges.⁴⁶ These new problems urge the need to arrange a specific set of normative values to the international and local actors involved in transitional justice processes, portraying on the one hand, the international actors - as apolitical actors who are dedicated on 'doing good' - and, on the other hand, local actors - who might engage with transitional justice because of external pressures but will either try to subvert and block it or will remain unsatisfied by it.⁴⁷

This internationalisation of transitional justice is important because, in principle, it allows justice to be pursued in instances where the political leadership lacks commitment to accountability. Through a potential impact on governance and electoral politics that are fundamentally different from State-driven transitional justice,⁴⁸ where political influences could either shape the results, or only implement tools in favour of their will.

In contrast, approaches with a stronger emphasis on the notion of justice are guided by the question on what shape justice should take. They outline different understandings of the matter, such as punitive, corrective,

⁴⁴ JONES, B.; BERNATH, J., 2018, p.1.

⁴⁵ BUCKLEY-ZISTEL, S., 2014, p.3.

⁴⁶ ARTHUR, Paige – How "transitions" reshaped human rights: a conceptual history of transitional justice. *Human Rights Quarterly*, 2009, p. 363.

⁴⁷ JONES, B.; BERNATH, J., 2018, p.1-5.

⁴⁸ HANSEN, T. O., 2013.

restorative, reparative or distributive, and discuss how particular transitional justice mechanisms correspond to these aims.⁴⁹

The aims of transitional justice tend to vary depending on the context, but there are some constant features, such as the recognition of individuals' dignity; the acknowledgment of violations and victims redress; and the focus on strategies to prevent them from happening again. These are the main points of transitional justice that can set the focus for its tools, while some complementary aims are pointed out by the International Center for Transitional Justice (ICTJ), such as: establishing accountable institutions and restoring confidence in them; making access to justice a reality for the most vulnerable ones in the aftermath of human rights violations; ensuring that women and marginalised groups play an effective role in the pursuit of a just society (using them as a tool, not just a secondary actor); implementing respect for the rule of law; facilitating peace processes and fostering durable resolution of conflicts; establishing a basis to address the underlying causes of conflict and marginalisation; and advancing the cause of reconciliation.⁵⁰

Responding to these structural problems on behalf of the victims, in the form of distributive justice, symbolic reparations and many other social programs for the communities, not only repairs the harm suffered by victim-survivors, but also prevents new cycles of violence.⁵¹ These forms of reparations generally consist of civil remedies (as opposed to criminal remedies) that are designed to redress harm resulting from an unlawful act that violates the rights of a person. In most domestic national settings, reparations are typically awarded pursuant to a court proceeding. In transitional justice settings, however, there are often too many victim-survivors with potential claims for the courts to efficiently and effectively

⁴⁹ BUCKLEY-ZISTEL, S., 2014, p.6.

⁵⁰ THE INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE – What is Transitional Justice?

⁵¹ LAPLANTE, Lisa J.; THEIDON, Kimberly Susan – Truth with consequences: Justice and reparations in post-Truth Commission Peru. *Human Rights Quarterly*, 2007, p. 240.

handle, thus prompting governments to resort to administrative solutions. Such programs, often following a truth commission's recommendations, attempt to provide an array of pecuniary and non-pecuniary measures to respond to the damage caused by conflict, repression, and political violence.⁵²

These tools are a key to achieve reconciliation, together with civil society and other non-State actors that can and should play an important role in shaping transitional justice solutions, acting as one of the tools in liberalising political transitions.⁵³ These transitional justice instruments are aimed to promote peace building in post-conflict societies, supporting the victims and bringing them the recognition for their suffering. This doesn't mean, nonetheless, that transitional justice has a transition towards democracy as a precedent to exist. In fact, the main characteristics of these devices is that it doesn't require a transition to a liberal regime to be qualified as a transitional justice tool.⁵⁴

In some cases, even, no fundamental political transition has taken place, at least in the moment when the justice procedures are launched. This category of cases is extremely diverse, ranging from societies such as Uganda or Colombia - which were still under armed conflict and serious human rights abuses when a transitional justice procedure was launched - to power-sharing and failed (or at least disputed) transitions - such as that in Kenya - and consolidated democracies - such as Canada, Australia and Brazil, that started a Truth Commission in 2011. Twenty-six years after the end of the dictatorship in 1985.⁵⁵ These cases can hardly be understood and evaluated using a single framework, although there may be certain

⁵² HAYNER, P. B. 2011. p. 67-83.

⁵³ BUCKLEY-ZISTEL, S., 2014, p.112.

⁵⁴ BUCKLEY-ZISTEL, S., 2014, p.114.

⁵⁵ SCHNEIDER, Nina – Truth no more? The struggle over the National Truth Commission in Brazil. Iberoamericana, 2011.

similarities between them, including a disconnection between transitional justice and the pursuit of fundamental political change.⁵⁶

Transitional justice tools are used in different political scenarios and stages in history. As discourses on transitional justice have moved to the very forefront of debates about democratisation, conflict prevention and peacebuilding, the enhanced normative power of the transitional justice paradigm seems to reflect an increased belief among important actors that the central question is no longer if something should be done after past human rights abuses, but how it should be done.⁵⁷ It also acknowledges that the notion of transitional justice can be relevant to other types of cases besides liberalising political transitions, and recognizes that certain goals, such as addressing impunity and providing victims with redress, reoccur in many different contexts. Furthermore, transitional justice scholars - often emphasising an interdisciplinary approach to understanding the law's ability to promote progressive societal change - have created useful tools to analyse accountability processes, truth-seeking and victims' redress - tools that can be used to improve our understanding these processes in various contexts.⁵⁸ All these devices are indispensable upon the healing process, seen that they are not necessarily linked with a transition, but still applied in many different situations, as long as new necessities appear in civil societies.

2.3 - Healing with Transitional Justice.

Alongside their primary role in providing accountability for gross human rights violations, transitional justice interventions have gained growing recognition in recent years as key components of broader peace building and reconciliation efforts.⁵⁹ The post-conflict period comes

⁵⁶ BUCKLEY-ZISTEL, S., 2014, p.117.

⁵⁷ NAGY, Rosemary – Transitional Justice as Global Project: Critical Reflections, 2008.

⁵⁸ BUCKLEY-ZISTEL, S., 2014, p.120.

⁵⁹ BUCKLEY-ZISTEL, S., 2014, p.52.

together with a unique ‘transformative moment’ for reconciliation in divided societies, as the end of widespread conflict can offer an initial opportunity to restructure a divided society. Nevertheless, it is difficult for former enemies to begin to redefine their antagonistic identifications and relationships in order to establish a new regime.⁶⁰ In that sense, transitional justice interventions may serve solely to the purpose of social learning in transformative moments, since they often provide the first societal venue in which former antagonists are brought together in the post-conflict environment to face the consequences of their violent past and to reconsider the grassroots of their relations with one another.⁶¹ Thus, it’s possible to perceive that these crucial processes of social learning might be what ultimately serve as the central causal links mediating the relationship between transitional justice and reconciliation in divided societies.⁶²

It’s imperative to understand, however, that this doesn’t indicate that transitional justice interventions represent a ‘magic bullet’, able to foster lasting intergroup reconciliation in divided societies.⁶³ Rather, it is argued that these interventions have the potential to serve as catalysts for the social and psychological processes through which former enemies can come to alter their perceptions and the nature of their relations with one another, and through this social learning, begin to create the conditions necessary to reconciliation and sustainable peace in divided societies.⁶⁴ This prompts several questions on what role transitional justice should play in divided societies, including the use of many different tools and how they can affect and solve problems, in order to advance these processes. A recent collection of conflict transformation in intergroup relations came to

⁶⁰ JEONG, Ho-Won – Peacebuilding in postconflict societies: Strategy and process, 2005.

⁶¹ AIKEN, Nevin T. – Post-conflict peacebuilding and the politics of identity: Insights for restoration and reconciliation in transitional justice. 2008.

⁶² BUCKLEY-ZISTEL, S., 2014, p.43.

⁶³ AIKEN, N. T., 2008.

⁶⁴ JEONG, H., 2005.

the conclusion that reconciliation in deeply divided societies may ultimately require transitional justice interventions that are capable of promoting a combination of three distinct forms of social learning in order to achieve peacebuilding.⁶⁵

The first of these social learning processes, instrumental learning, refers to the use of interventions designed to engage former antagonists in sustained cooperative interaction in a post-conflict period. This way, they can start to change their relationships and progressively learn to replace their hostility with trust, and their negative perception with a positive response of the others.⁶⁶

Socioemotional learning, on the other hand, is an intervention developed to confront the perceptual and emotional inheritances from past conflicts as a way to break obstacles that are blocking reconciliation. These obstacles are usually caused mainly by feelings of guilt, scepticism, fear, and victimisation in segmented groups.⁶⁷

Lastly, reconciliatory social learning in deeply divided societies will also require elements of distributive learning — interventions designed to ameliorate existing structural and material inequalities between divided groups that might otherwise continue to sustain intergroup antagonisms even in the absence of overt physical violence.⁶⁸

Together, all these tools, actors and theories can unpack the complex relationship between transitional justice and reconciliation in divided societies. Incorporated alongside the institutions and mechanisms designed to work with other ongoing societal efforts to rebuild relations and establish more equitable relationships between former enemies in divided societies.⁶⁹ The theory suggests, essentially, healing mechanisms to

⁶⁵ BUCKLEY-ZISTEL, S., 2014, p.43.

⁶⁶ NADLER, Arie; SHNABEL, Nurit – The social psychology of intergroup reconciliation, 2008, p.59.

⁶⁷ BUCKLEY-ZISTEL, S., 2014, p.44.

⁶⁸ NADLER, A.; SHNABEL, N., 2008, p.59.

⁶⁹ BUCKLEY-ZISTEL, S., 2014, p.58.

achieve peacebuilding in post-conflict societies and groups that aim to achieve peace with their past.

To define the evolution of transitional justice, its changes through the decades were taken in consideration in this chapter, along with the importance of its tools and how they are applied in many different situations. In order to analyse the effectiveness of transitional justice, however, the next chapter will examine truth commissions specifically, focusing on how they evolved, their role on dealing with the past and how they shape society while rewriting history

3- Background on Truth Commissions.

To deeply understand the impact and effectiveness of Brazil's CNV, it is necessary to fathom the evolution of truth commissions through time. These commissions have as objectives, to adequately face the difficult task of policing the frontiers of truth and lie, opinion and factual information, and present and past, in order to produce a final report able to bring light to some of history's darkest times.⁷⁰ The decision to establish a truth commission surrounds many questions, especially concerning its necessity to deal with the past. In Brazil's case, the CNV was brought to light after almost 32 years, but before its establishment, some unofficial truth projects⁷¹ and other governmental bodies attempted to deal with the past, though they did not reach out to society's expectations.⁷² So what's the reason for establishing truth commissions? Why are they different from other governmental or society's initiatives? What powers do they have, and how are they efficient enough to achieve its purposes? How are they formed? What are their main objectives?

This chapter seeks to analyse the structure of truth commissions, tracing their definition and showing their role in political transitions. It will also elucidate the importance of truth in the healing process and detach the intrinsic characteristics that structure these independent bodies, while highlighting the powers given to them.

Initially, it is important to have in mind that truth commissions are one of many transitional justice tools, used in order to create an official, accurate, detailed and impartial record about the past.⁷³ They are defined

⁷⁰ BAKINER, O., 2016, p. 8.

⁷¹ To see more about this unofficial truth Project, read: ARNS, Paulo Evaristo – Brasil, nunca mais. 1996. And there is an English version of it: PAULO, Brazil Archdiocese of São – Torture in Brazil: A Shocking Report on the Pervasive Use of Torture by Brazilian Military Governments, 1964-1979, Secretly Prepared by the Archdiocese of São Paulo, 1998.

⁷² GUIMARÃES, Marco Aurelio, et al. – Forensic investigation, truth and trust in the context of transitional justice in Brazil. *Human Remains and Violence: An Interdisciplinary Journal*, 2017

⁷³ BLOOMFIELD, David; BARNES, Terri; HUYSE, Lucien – Reconciliation after violent conflict: A handbook, 2003, p. 125.

as a temporary body established with an official mandate in order to investigate past human rights violations, identifying patterns and causes of violence, and aimed to publish a final report while working through a politically autonomous procedure.⁷⁴

This definition specifies five key components of a truth commission, that serve as fundamental characteristics to distinguish them from other investigatory bodies: a temporary body; the publishing of a final report; the focus on a limited number of past events; the autonomy from political intervention; and having an official mandate.⁷⁵

The first characteristic, a temporary body, refers to its operation for a limited amount of time. Because of that, it is impossible to qualify permanent organisations, like Non-Governmental Organisations (NGO's), parliamentary human rights commissions, or international bodies that protect human rights and seek to investigate past human rights abuses, as a truth commission.⁷⁶

Second to that, a truth commission has as a result the publishing of an extensive report, making recommendations and summarising the main findings. This report is usually submitted to the political institution that issued the truth commission mandate, such as the president's office, but it is important (and also a common practice) that the report becomes available for the general public as well, in different platforms such as the internet, publications, or other media platforms.⁷⁷ In the case of this study, Brazil's truth commission had the support of 'amnesty caravans' that since 2008 are a part of an outreach program to insert the general public into the debates, and to reflect on the past in order to bring accessibility to regions with difficult access to information. Each caravan included cultural

⁷⁴ OLSEN, Tricia D., PAYNE, Leigh A., REITER, Andrew G. – *Transitional Justice in Balance: Comparing Processes, Weighing Efficacy*, 2011.

⁷⁵ BAKINER, O., 2016, p. 24-26.

⁷⁶ WIEBELHAUS-BRAHM, Eric – *What is a truth commission and why does it matter?* 2009, p. 2.

⁷⁷ BAKINER, O., 2016. p. 241.

seminars, public hearings, and the adjudication of applications for amnesty. As of June 2014, 86 caravans had been organised around the country.⁷⁸ Even though these caravans are not a result of the commission's efforts, they worked alongside the CNV as a form of amplifying the range of its impact.

Next, the third characteristic is that truth commissions examine a limited number of past events and violations, that occurred on a specific time-frame established on its creation. This means that truth commissions do not investigate ongoing human rights abuses, and they do not only investigate incidents of violence and violations through an individual perspective, but its patterns, causes, and consequences.⁷⁹ In the Brazilian case, the commission concentrated its resources to address the massive human rights violations that were committed during the military rule, from 1964 to 1985, although its mandate included past human rights violations that occurred over the course of four decades (1946 to 1988)⁸⁰, defined by law nº 12.528/11 in its Article 1.⁸¹

A truth commission has to enjoy complete autonomy from direct intervention of political actors that might influence the course of its works, being analogous to a judicial autonomy. That is the fourth characteristic, and it means that although they are created through a state's support and ratification, other factors need to be taken into account, like its composition, together with the degree of financial, operational and legal autonomy.⁸² The crucial test for a truth commission's autonomy is whether or not the political

⁷⁸ SKAAR, E.; GARCIA-GODOS, J.; COLLINS, C., 2016. p. 115.

⁷⁹ Crocker, David A, – Truth Commissions and Transitional Justice, 2000.

⁸⁰ GONZÁLEZ, Eduardo – Observações sobre o Mandato Legal da Comissão Nacional da Verdade do Brasil, 2012, p.7.

⁸¹ Lei nº 12.528, Article 1. Our translation: 'Its established, under the protection of the Civil House of the Republic Presidential Office, The National Truth Commission, with the purpose to examine and clarify massive human rights violations that occurred on the time-frame fixed in article 8º of the Transitory Constitutional Dispositions, to accomplish the right to memory and historical truth in order to promote national reconciliation.'

⁸² FREEMAN, Mark – Truth commissions and procedural fairness, 2006, p. 17.

decision makers alter the content of the final report, either during the commission process or at its end.⁸³

Finally, the commissions are official in character, since either a state institution or an international organisation have to authorise the commissioners to assume the truth-finding task, giving them an official mandate. This allows them to enjoy greater access to information, security and increased assurance that their findings will be given more serious consideration.⁸⁴ Because of this characteristic, non-governmental organisations can't be classified as truth-commissions, since they lack an official mandate and their findings do not carry an official endorsement. But they can contribute to a truth commission with their expertise, representation (e.g. victims from marginalised sectors), and with engagement to achieve better results.⁸⁵

After grasping its definition, the next step to holistically understand the role of a truth commission is to look at its evolution through time. Looking at the roots of its embodiment as a transitional justice tool is important to comprehend its usage and relevance. Therefore, knowing the evolution of the truth commissions is the next step in this research, as it seeks to achieve a broader understand of these tools, before narrowing its impacts to Brazil and Latin-America.

3.1- Historical changes in Truth Commissions through the decades.

Truth commissions are no passing fashion⁸⁶, and as of mid 2017 they were more than fifty around the world,⁸⁷ that evolved through the Phases

⁸³ BAKINER, O., 2015. p. 26.

⁸⁴ WIEBELHAUS-BRAHM, Eric. *Uncovering the truth: Examining truth commission success and impact*, 2007, p. 16.

⁸⁵ MCCONNACHIE, Kirsten. *Truth Commissions and NGOs: The Essential Relationship*, 2004. p.10.

⁸⁶ BAKINER, O., 2016. p. 38.

⁸⁷ PATHAK, Bishnu – *A Comparative Study of World's Truth Commissions—From Madness to Hope*, 2017.

of transitional justice to achieve different characteristics. It became then possible to classify most of them into three different categories: first-generation transitional, second-generation transitional, and non-transitional.⁸⁸ The truth commissions from the first-generation transitional had an expressive start with the democratic wave that surrounded South America in the 1980's. The region contains at least 12 of the almost 50 countries that have utilised truth commissions in the past three decades.⁸⁹ Not only were these countries pioneers in applying these transitional justice mechanisms to investigate serious human rights violations, but they also served as pilots for the active involvement of the United Nations (UN) in peace processes during the post-Cold War period.⁹⁰ All of these commissions were established within the first year of the democratic transition, showing the need to unfold the truth about the human rights violations before moving towards a new democratic rule.⁹¹ They emerged as a tool with characteristics of Phase II transitional justice models, showing the importance of unveiling the truth as a way to transition to these new emerging democracies.

The second category, second-generation transitional truth commissions, appeared during the mid-1990s and 2000s to address civil war and internal armed conflict between government forces and insurgent groups. Some examples include El Salvador, South Africa, Sri Lanka, Haiti, Nigeria, Peru, Timor-Leste, Sierra Leone, Guatemala, and Liberia, whose truth commissions were sometimes already working while domestic armed conflict was still happening, after several democratic/and or authoritarian regimes in these countries.⁹²

While the two categories above referred share a sense of immediacy, seen that most of them started in within one year of transition to peace and/or democracy, the second-generation commissions innovate

⁸⁸ BAKINER, O., 2016. p. 34.

⁸⁹ HAYNER, Priscilla B. – Fifteen truth commissions-1974 to 1994: a comparative study, 1994.

⁹⁰ SKAAR, E.; GARCÍA-GODOS, J.; COLLINS, C., 2016. p.6.

⁹¹ BAKINER, O., 2016, p. 35.

⁹² BRONKHORST, D., 2003.

on being the first ones to receive significant foreign funding, as well as having foreign human rights activists and experts sharing expertise on its procedures and serving as commissioners. In some commissions - such as Guatemala⁹³, East Timor⁹⁴, Sierra Leone⁹⁵, and Liberia⁹⁶ - an UN backed peace accord took place, while others were started by international Non-governmental Organisations in the wake of internal conflict and authoritarian rule - such as Sri Lanka, Haiti, South Africa, Nigeria, and Peru.⁹⁷

Another change present in the second-generation truth commissions was a more active role in their sense of immediacy, since they not only happened in the aftermath, but also during violent conflicts. At this point, truth commissions had changed from domestic projects to an international - or even transnational - initiative, embodying some important aspirations in order to rewrite nations' history, like the investigation of a wide range of violations; a detailed report with lengthy historical narratives that detailed the causes and consequences of the political violence; and the proposal of a series of extensive recommendations.⁹⁸

In the 2000s, a further transformation happened, when truth commissions were established under consolidated democracies. South Korea, Uruguay, Panama, Grenada, Chile, Paraguay, Ghana, Ecuador, Mauritius, the Solomon Islands, Brazil - which is the focus of this study-, Canada,⁹⁹ Morocco (where a commission was created under a monarchical authoritarian regime),¹⁰⁰ Indonesia and East Timor (who created a joint truth commission as a larger diplomatic move to strengthen

⁹³ See more in SIEDER, Rachel – Guatemala after the peace accords, 1998.

⁹⁴ See more in STAHN, Carsten – Accommodating individual criminal responsibility and national reconciliation: the UN Truth Commission for East Timor, 2001.

⁹⁵ See more in SCHABAS, William – The relationship between truth commissions and international courts: The case of Sierra Leone, 2003.

⁹⁶ See more in YOUNG, Laura A.; PARK, Rosalyn –, 2009.

⁹⁷ BAKINER, O., 2016, p. 38-40.

⁹⁸ BAKINER, O., 2016, p. 36

⁹⁹ BAKINER, O., 2016, p. 37

¹⁰⁰ WILCOX, Luke. Reshaping Civil Society through a Truth Commission: Human Rights in Morocco's Process of Political Reform, 2009.

their relations) became part of what is known as non-transitional truth commissions, the third category.¹⁰¹ Here, human rights violations that ended more than a decade earlier (with the exception of the joint East Timor and Indonesia truth commission, that took place six years after the end of violations) were addressed. Because of their retrospective characteristic, these truth commissions went from transitional justice tools to post-transitional institutions.¹⁰²

In the specific cases of Uruguay, Paraguay and Brazil, official accounts of human rights abuses were created after over a decade of democratic rule, following previous unofficial attempts of accountability.¹⁰³ Their focus, alike other non-transitional truth commissions, was on a wide-range of human rights violations, identifying patterns and evolving the concept of truth commissions from investigating a narrow set of violations (that occurred on a recent conflict, and/or past-authoritarian rule) to a broad range of injustices.

Another striking characteristic of the non-transitional commissions is the capacity to reach the interest of politically conservative sectors. While the first- and second-generation commissions were mostly established by centrist or center-left presidents, or as a result of peace accords, the third-generation truth commissions incorporated a broader spectrum of political actors and ideologies. Although leftist and center-left presidents established them in Ecuador (Rafael Correa), Chile (Ricardo Lagos), Brazil (Luiz Inácio Lula da Silva), and Uruguay (Julio María Sanguinetti), Panama's truth commission was established by a conservative president (Mireya Moscoso)¹⁰⁴, Paraguay's 2004 commission was dominated by the same Colorado Party that collaborated with the previous military rule¹⁰⁵, and King Mohammed VI of Morocco established the Moroccan Equity and

¹⁰¹ HIRST, Megan. Too much friendship, too little truth: Monitoring Report on the Commission of Truth and Friendship in Indonesia and Timor-Leste, 2008.

¹⁰² BAKINER, O., 2016. p. 37

¹⁰³ BICKFORD, Louis. Unofficial truth projects. Human Rights Quarterly, 2007.

¹⁰⁴ MENDEZ, Juan E.; MARIEZCURRENA, Javier. Unspeakable truths, 2003, p.246

¹⁰⁵ ARNOSO, Maitane, [et al]. La Comisión de Verdad y Justicia: percepción de eficacia en Paraguay, 2014.

Reconciliation Commission to investigate the massive human rights abuses during the reign of his father.¹⁰⁶ This shows that the new truth commissions' objectives, set up in consolidated democracies, were means of coming to terms with the distant - rather than the immediate - past, and their establishment wasn't necessarily to serve as a basis for state-building.

After being familiarised with the definitions of truth commissions, the next step to understand this transitional justice mechanism is to look inside its creation procedures, including how its powers are set and to what extent they are used towards the accountability of the past.

3.2 - How are truth commissions formed?

When civil society pressures the government on the formation of a truth commission, as a way to highlight its needs to deal with the past, a number of decision makers issue a mandate that can delineate the basic tasks and the organisational structure of the commission.¹⁰⁷ The truth commission is created by a political decision-making procedure, that also designates part of (or all) the commissioners and support staff. This procedure also, sets the rules on how much discretionary power to grant the truth commission to conduct the investigation, since it needs autonomous power to achieve its goals as an independent body.¹⁰⁸

The government establishes the mandate of a truth commission through their direct representative, but parliaments, high courts, or international organisations (such as the United Nations) have also sponsored truth commissions around the world.¹⁰⁹ And while civil society groups may be set aside during the initial negotiation process of a truth

¹⁰⁶ WILCOX, L., 2009.

¹⁰⁷ CROKER, D. A., 2000, p. 23.

¹⁰⁸ DANCY, Geoff; KIM, Hunjoon; WIEBELHAUS-BRAHM, Eric. The turn to truth: Trends in truth commission experimentation, 2010, p. 49.

¹⁰⁹ VASALLO, Mark. Truth and Reconciliation Commissions: General Considerations and a Critical Comparison of the Commissions of Chile and El Salvador. The University of Miami Inter-American Law Review, 2002.

commission, opposition parties, insurgent groups, the military, and courts often participate in its creation, as decision makers or key veto players. The inclusivity in this initial process is a determinant factor of the truth commission's impact, because it is the moment to set its goals, composition, and procedures.¹¹⁰

The commission's mandate is traced by those key decision makers, and it settles the structure and outlines the commission's terms of reference, such as the duration of the commission; sources of funding; its goals; how to conduct the investigation; the judicial powers given to it (to subpoena, to name perpetrators, to investigate documents, and so on); specification of the crimes and violations under investigation; and what period in time to investigate political violence and violations.¹¹¹

Along with these specifications, the mandate also settles the powers given to a truth commission, through a wide range of judiciary powers that can change depending on the environment in which they operate, and the nature of human rights abuses they investigate.¹¹² In some cases, like the South African truth and reconciliation commission, they can even be given amnesty powers,¹¹³ proving that the range of possibilities may vary depending on the context that the truth commission is inserted to.

Some of these powers, however, aren't well seen within society, such as the exclusion of torture and exile from Chile's 1990 National Commission on Truth and Reconciliation's mandate, which was seen as a serious shortcoming by human rights activists.¹¹⁴ Showing the need for civil societies to participate in the first level of formation of truth commissions without society's grassroots interest in confronting the past, the motivation to start a truth commission would not have existed, as they are formed from

¹¹⁰ BAKINER, O., 2016, p. 49.

¹¹¹ FREEMAN, M. 2006. p. 27

¹¹² CHAPMAN, Audrey R., AND P. Ball. The Truth of Truth Commissions: Comparative Lessons from Haiti, South Africa, and Guatemala, 2001.

¹¹³ VAN ZYL, Paul. Dilemmas of transitional justice: The case of South Africa's Truth and Reconciliation Commission, 1999.

¹¹⁴ SKAAR, E.; GARCÍA-GODOS, J.; COLLINS, C., 2016. p. 127.

civil society pressures on to the government¹¹⁵; because of that, society's interests should be assessed in its creation rather than just assumed.¹¹⁶

The powers given to a truth commission are established in order to achieve the goals and expectations traced in its creation, as a way to find truth and come together with its violent past. But why is the truth so important? What are the actual achievements of unveiling the historical truth? To answer these questions is to look at the truth as a mean to achieve the main objectives of transitional justice.

3.3 - The Importance of the Truth.

In order to meet the challenges of transitional justice and achieve the objectives of a democracy that wants to move forward and towards a brighter future, a society needs to investigate, establish and publicly disseminate the truth about past human rights abuses. The means to reach this goal is to not only use what is known as forensic truth, which presents factual information about past atrocities and identifies the violators, but also give importance to emotional truth, which comes in the form of psychological and physical consequences of the abuses,¹¹⁷ and take into consideration the chain of command and historical factors that led into these violations and can explain them.

Victims and their descendants have a moral right to know the truth about the massive human rights abuses, but while they demand appropriate sanctions, it is impossible to apply them unless the identification of the perpetrators and the nature of their involvement is

¹¹⁵ MCEVOY, Kieran; MCGREGOR, Lorna. – Transitional justice from below: Grassroots activism and the struggle for change, 2008.

¹¹⁶ SUBOTIĆ, Jelena. – The transformation of international transitional justice advocacy, 2012.

¹¹⁷ CROKER, D. A., 2000, p. 23.

officially acknowledged.¹¹⁸ Furthermore, reparations are only possible if the victims are correctly identified, along with the harms that they suffered¹¹⁹

While handling these tensions, re-writing the past and tracing the causal references for reparations, truth commissions serve as a platform for victims and perpetrators, offering for both of them opportunities that go beyond the spectrum of retributive justice. These commissions bring another valid form of justice, known as restorative justice, that focuses not only on penalties, punishment and retribution, but on recognising harm, encourage healing, and aiming for reconciliation as a part of the peacebuilding process.¹²⁰ And one of the mechanisms of accountability to reach reconciliation comes in the form of truth-telling. An essential way to heal the scars that still mark societies going through transition - or established democracies who didn't achieve reconciliation with the ones affected by past human rights atrocities- is telling the truth. Which is a powerful way to overcome impunity for past human rights abuses.¹²¹

Truth-telling (or truth-seeking) is increasingly considered a vital component of the peacebuilding process, just as important as other steps such as disarmament, demobilisation, and the holding of post-war elections.¹²² Truth recovery is expected to enable a process of 'national reconciliation', as society comes together and finds a platform to hold their narratives accountable,¹²³ which encourages social healing while promoting individual over collective guilt. As the truth about past crimes and human rights violations are exposed, individuals (not in the form of ethnic, cultural, religious, or military groups) are blamed for past atrocities, being either punished or forced to publicly admit their crimes, which puts an end to impunity. In that sense, the International Institute for Democracy

¹¹⁸ CROCKER, David A. – Reckoning with past wrongs: A normative framework, 1999, p. 50.

¹¹⁹ BLOOMFIELD, D.; BARNES, T.; HUYSE, L., 2003, p. 155

¹²⁰ NADLER, A.; MALLOY, T.; FISHER, J. D., 2008.

¹²¹ MENDEZ, J. E.; MARIEZCURRENA, J., 2003.

¹²² MENDELOFF, David. Truth-seeking, truth-telling, and post conflict peacebuilding: Curb the enthusiasm?, 2004, p. 355.

¹²³ JONES, B.; BERNATH, J., 2017, p. 134.

and Electoral Assistance (IDEA) includes truth-telling as one of the main necessary mechanisms to achieve reconciliation.¹²⁴

In short, truth-telling is therapeutic.¹²⁵ By exposing the truth of past crimes, victims and survivors can start the healing process from the trauma of war and finally receive some closure, while working towards reconciling with their former adversaries, and/or perpetrators. It is a process of national reconciliation and individual rehabilitation.¹²⁶ Telling the truth about their wounds can heal the wounded and listening to these stories can help societies come to terms with their past,¹²⁷ as the process of truth-telling becomes as important as the truth itself.

Finally, as a result of this process, truth-telling also provides an official record of the past, by archiving a definitive word on the past and allowing adversaries to come together constructively in order to produce an authoritative report and reduce the number of permissible lies in public discourses.¹²⁸ Educating the nation about the events of its past, along with the creation of a credible accountability of human rights abuses, allows society to prevent the repetition of such violence in the future.¹²⁹ Having an official record of the past in combination with the recommendations elaborated by truth commissions will not only ensure the avoidance of human rights violations in the future, but also encourage the creation of a human rights culture.¹³⁰

In the process of educating a nation about its past, truth commissions are a way to encourage peace through an institutional reform, as they reveal structural institutional pathologies that led to conflict or contributed

¹²⁴ BLOOMFIELD, D.; BARNES, T.; HUYSE, L., 2003.

¹²⁵ BROUNÉUS, Karen. Truth-telling as talking cure? Insecurity and retraumatization in the Rwandan Gacaca courts, 2008.

¹²⁶ NADLER, A.; MALLOY, T.; FISHER, J. D., 2008.

¹²⁷ AIKEN, N. T., 2008.

¹²⁸ IGNATIEFF, MICHAEL. Articles of Faith. Index on Censorship. 1996. p.110–122, as cited in MENDELOFF, D., 2004, p. 360.

¹²⁹ HAYNER, P. B. 1994, p. 607-609.

¹³⁰ SARKIN, Jeremy. The necessity and challenges of establishing a truth and reconciliation commission in Rwanda, 1999, p. 800.

to wartime abuses. Using tools such as vetting (also known as lustration) in order to remove the individuals responsible for these abuses from positions of power and authority, along with deterrence through criminal prosecution - which forces them to face public shaming even if they are exempt from criminal sanctions -, peace can be achieved.¹³¹

The importance of the truth on the healing process, therefore, can be seen in societies that are divided, in transition, and in established democracies with unhealed scars. The impact of truth-telling, its ability to achieve peace building, to start the healing process and the importance of its use to structure a government that passed through serious human rights abuses, had a powerful influence in the new democracies that surfaced Latin-America in the late eighties, having its reflexes until today. But did Brazil achieve its objectives on truth-telling? Was Brazil's society "educated" about its past?

In this chapter we traced the importance of the truth to achieve the goals set by the commissions in their creation, while analysing the evolution of these investigative bodies, and the role they play on the process of dealing with past human rights abuses. These independent bodies are formed to investigate and rewrite the truth, and to understand their objective is also to know what they are aimed to hold accountable. This raises questions on what events led into the formation of a truth commission. To answer this, the next chapter will focus on the historical, political and socio-economic placement of Brazil's CNV, showing the events that led to its creation, structuring the background of Brazil's massive human rights violations as a way to understand the importance of creating the CNV and answering questions on: why it was formed so late; what reasons blocked its creation; and whether or not there were attempts of accountability before the CNV

¹³¹ DE GREIFF, Pablo; MAYER-RIECKH, Alexander. Justice as prevention: vetting public employees in transitional societies, 2007.

4- The history of Human rights abuses in Brazil.

The emergency of Brazil's dictatorship in 1964 wasn't based only on an economic crisis, but a result of a political polarisation and radicalisation of the democratic regime that started in 1946.¹³² Understanding this background is important to have a clear critical response to the works of the CNV. Knowing the events under the scope of its mandate can lead towards a complete comprehension on why Brazil's truth commission was established to investigate past human rights abuses that happened during these forty-four years.¹³³

As a way to find these answers, this chapter starts with an socioeconomic, historical and political explanation of the main events that occurred between 1946 and 1988. Its objectives are to answer questions on what events were behind the massive human rights abuses in Brazil and who were the ones responsible for these past atrocities.

To answer these questions, it is also important to analyse the socio-economic and political changes in Brazil, along with the direct influences of global politics on a national level. Going through an investigation on the motives that led to the almost thirty-two years of impunity, questioning what motives were behind this negligence upon dealing with the past; whether or not it was just the result of a controversial Amnesty law; and whether there were any initiatives of accountability.

Brazil is a continental country with a very young democracy that was formally restored only in 1985. Since then, successive democratic governments avoided the accountability of its violent past, assuring that this was an affirmation of the "transitional pact" established through the amnesty law and political peace accords that allowed the return to a

¹³² FAUSTO, Boris – *Historia concisa de Brasil*, 2015, p. 219-224

¹³³ Lei nº 12.528, 2011.

democratic state.¹³⁴ This argument was backed up by the media and accepted by many sectors of Brazil's society,¹³⁵ creating a culture of impunity that persists until today (2018).

Highlighting these historical and socio-economic aspects is a way to understand the causes that led the Brazilian state refusal to establish a systematic and official investigative body for almost thirty-two years, until changes in the political scenario led to a different approach to these problems, giving voice to the ones who suffered. But why did the government change its perception on dealing with the past?

To answer this question, it's important to remember that there were initiatives that surfaced from society, and others directly linked to the government. This research will discuss the works of the *Brasil Nunca Mais* initiative, showing an unofficial truth project that for years was the only initiative of accountability to these past human rights abuses.¹³⁶ It was coordinated by the Catholic church, and led to the creation of a group formed by the families of the victims, whose works were acknowledged in the CNV's report as an official source of information.¹³⁷

Another initiative was the creation of an Amnesty Commission, a Brazilian organ directly linked to the State that, since 2002, has decided over individual cases of financial and moral reparations, and collected substantial evidence of past human rights violations¹³⁸. But to what extent are these groups really relevant on the road to accountability? What are the impacts of its activities on the works of the CNV?

Dissecting these events and setting the causal references for the works of the CNV, while showing the steps that were taken before the establishment of a truth commission, are the next focus of this research as

¹³⁴ SCHNEIDER, Nina; DE ALMEIDA, Gisele Iecker. – The Brazilian National Truth Commission (2012–2014) as a State-Commissioned History Project. In: The Palgrave Handbook of State-Sponsored History After 1945, 2018, p. 638.

¹³⁵ REIS FILHO, Daniel Aarão. Ditadura militar, esquerdas e sociedade. Zahar, 2000.

¹³⁶ SKAAR, E.; GARCIA-GODOS, J.; COLLINS, C., 2016, p. 115-116

¹³⁷ SCHNEIDER, N., 2011.

¹³⁸ SCHNEIDER, N.; DE ALMEIDA, G. I., 2018, p. 639.

this chapter finishes with a background on the early works of the CNV, setting the basis towards the examination of its procedures.

4.1 - Human Rights abuses in Brazil, a brief History of events.

To understand the roots of the CNV's proceedings, it is important to know the historical, political and socioeconomic context of the events that preceded the works of the commission from 1946 on.¹³⁹ Between 1946 and 1964, Brazil was under a fragile and unstable democracy, that came after a fifteen-year dictatorship (from 1930 to 1945) ruled by Getúlio Vargas. A period known as "era Vargas" had come to an end, but its reflexes still harvested through this new emerging democracy, which carried out a feeling of fear throughout society. As police forces were still aggressive and violent, abusing of power and institutionalising the belief that "those who detain the power, can do anything"¹⁴⁰, a mindset spread through military forces.¹⁴¹

That period was also marked by the spread of the Union of the Soviet Socialist Republics' (URSS) hegemony, and a fear of communism affecting Latin America created an anti-communism trend. And to maintain good relations with the United States of America (USA), some measures - such as making the activities of the *Partido Comunista Brasileiro* (PCB) [Brazilian Communist Party] illegal - became indispensable to the political order in Brazil.¹⁴² The years that followed represented the enforcement of military forces and conservative parties in Brazil's political scenario. As they claimed to have an effective representation on it, they argued on the need to protect Brazil from any proximity of the international wave of communism

¹³⁹ BRAZIL. Lei nº 12.528, 2011.

¹⁴⁰ Our translation on "aqueles que detém o poder, tudo podem".

¹⁴¹ BRASIL; VERDADE, Comissão Nacional da – Relatório Comissão Nacional da Verdade: Volume I, 2014, p. 86.

¹⁴² BRANDÃO, Gildo Marçal – A ilegalidade mata: o Partido Comunista e o sistema partidário (1945-64), 1997, 23-34.

that started to spread, in consonance with the crescent USA influence on Latin America, which was well received by the armed forces, the conservative parties and Brazil's corporate class.¹⁴³

In 1961, Brazil was under the command of President Jânio Quadros, and his resignation triggered a severe political crisis, since his vice-president, João Goulart, who was the direct successor according to the current Federal Constitution, was unacceptable to many high-ranked military officers.¹⁴⁴ They considered João Goulart a dangerous politician because of his strong political ties with the left wing. Consequently, the military ministers tried to block his ascension as president by using the democratic means available to do it. They failed, but still had enough power to influence the congress to vote for a parliamentary system as a way to restrain his powers.¹⁴⁵ Along with this political instability, an economic crisis was intensified, with some indicators showing that the deceleration in the industry was actually a secular decline. This led to an increase of the pressure on Brazil's economy as it coincided with a declined capacity to gather international investment, specially from private resources.¹⁴⁶

With the stagnation of the industry and the unattractive situation of the market for foreign investors, Brazil's economic growth had a powerful decline, the inflation became out of control, and in the last months of Goulart's government the prices were rising over one hundred percent.¹⁴⁷

This economic crisis, triggered by the previous political crisis, propitiated the military forces to become even stronger in the political scenario. They turned into the front line of the right-wing and got

¹⁴³ DELGADO, Lucilia de Almeida Neves; FERREIRA, Jorge – O Brasil Republicano, vol. 3: O tempo da experiência democrática, 2003, p. 205-207.

¹⁴⁴ DE CARVALHO, José Murilo — Forças Armadas e política no Brasil, 2005, p. 119.

¹⁴⁵ COHEN, Youssef – Democracy from above: the political origins of military dictatorship in Brazil, 1987, p. 36

¹⁴⁶ Werner Baer estimates that the inflow of private foreign capital in Brazil declined from 108 million U.S. dollars in 1961 to 71 million in 1962, and to 31 million in 1963. BAER, Werner – Industrialization and Economic Development in Brazil, p. 200.

¹⁴⁷ STEPAN, Alfred C. – The military in politics: changing patterns in Brazil, 1971, p. 139-141.

international support (specifically from the USA¹⁴⁸), along with support from many local and international investors, who saw an opportunity to change the politics along with the possibility of a new regime being installed. With support from society, that became unhappy with the government's administration due to the crescent raises on inflation, poverty and unemployment,¹⁴⁹ the moment was propitious for the military to present a new move. Using the Constituent Power to supply an institutional act that would rearrange Brazil's normative scenario.¹⁵⁰

On April 9, 1964 the Institutional Act number 1 (IA n. 1) was signed by the three military leaders: General Artur da Costa e Silva, Aviation Lieutenant Brigadier Francisco de Assis Correia de Mello and the vice-admiral Augusto Hammann Rademaker Grunewald. In the IA n.1's preamble¹⁵¹, they synthesized the reasons and the array of powers claimed

¹⁴⁸ The USA had a constant eye on Latin America at this time. Specially after breaking relations with Cuba in 1961, as Fidel Castro announced Cuba's alignment with the URSS. The polarity of the Cold War and the fear of the crescent wave of communism spreading throughout the world, made the USA influence on Brazil's political scenario even stronger. Tightening relations with Brazil's military High court of command with the USA military forces (as some of them fought together in World War II, and still had contact till this time). See more in PARKER, Phyllis R. – 1964: O papel dos Estados Unidos no golpe de estado de 31 de março, 1977.

¹⁴⁹ DE CARVALHO, J. M., 2005, p. 138-153.

¹⁵⁰ BRASIL; VERDADE, Comissão Nacional da, 2014a, p. 95,

¹⁵¹ Our translation: 'To the Nation. It is crucial in order to fix the concept of this civilian and military movement that had just opened Brazil to a new perspective about the future. What happened and will continue to happen at this moment, not just in the spirit and behavior of the armed forces, but at the public opinion nationally, is an authentic revolution. This revolution distinguishes from other armed movements by the fact that it does not translates on the interests and desires of a group, but on the interests and desires of the Nation. The victorious revolution invests on a Constituent Power. Which manifests through popular election or a revolution. This is the most expressive and radical form of the Constituent Power. [...] The Chiefs of the victorious revolution, in accordance to the action of the Armed Forces and by the unequivocal support of the Nation, represent the people and by its name wield the Constituent power, which only emerges from the people. The Institutional Act that is edited today by the Officers in Command, from the Army, the Air force and the Marine, in the name of the revolution that became victorious with the Nation's almost completely support, aims to secure the new government to be instituted in a way to be able to endure the indispensable need to do an economic, financial, political and moral reconstruction of Brazil, on a way to be able to directly and immediately address the serious and urgent problems that need recovery in order to restore the internal order and the national honour of our country. The victorious revolution requires to be institutionalised and rushes to its institutionalization in order to achieve the full powers that it effectively orders. [...] The constitutional processes did not, work in order to dismiss the current government, that deliberately wanted to bolsheivise our Nation. Discharged by the revolution, that will be the only one able to establish the norms and the constitutional processes of the new government, to assign the powers and juridical instruments in order to secure the exercise of the power on the exclusive interests of the Nation. To demonstrate that we cannot radicalize the revolutionary process, we decided to keep the Constitution of 1946, limiting ourselves to modify it only at the part that grants the power of the

in order to form a new regime that started to rise at this point.¹⁵² On March 31 a new government had emerged in Brazil, publicly recognized by the American president Lyndon Johnson just a few hours after the rise of the militaries.¹⁵³ That initiated their reforms on the government administration, starting with a list of 102 names of congressman, militaries, unionists, diplomats and ministers whose terms were going to be withdrawn due to their progressivist vision.¹⁵⁴

In 1968, the Institutional Act n. 5 was imposed, excusing the president from the Constitutional limitations that were set by the 1946 Constitution. This act also provided powers that had never been granted before, such as the possibility to suspend political powers from any citizen in the country for ten years, and to revoke the term of any politician in the country. Additionally, it ended with many Constitutional guarantees, including the right to file a habeas corpus, an instrument used by both prisoners and those who were politically chased in order to guarantee their right to life and personal freedom.¹⁵⁵ This not only shows the array of powers granted to the political leader, but also how the militaries controlled Brazilian society and were able to create a systematic culture of violence.

Along with all that political control, torture was used since 1964 in a greater or lesser extent by agents of the repression, and it did not disappear with the end of the armed organisations that opposed the government.¹⁵⁶ It was used not only to obtain information, but also as a form of intimidation, deterrence, and to spread terror to the opposition forces. The repressive

President of the Republic, so it can be able to accomplish the mission to restore the financial and economic order in Brazil, making urgent measures in order to stop the communism wave, which was already infiltrated not just in the heads of the state, but also in its administrative facilities. To reduce even more the powers that the victorious revolution bestows, we decided to maintain the full powers of the national congress, with the exceptions to its powers that are presented in this Institutional Act. It is clear that the revolution does not legitimates itself through the national congress. As the national congress actually receives from this Institutional Act, a result of the Constituent Power, inherent of all revolutions, its own legitimation.' Ato Institucional nº 1, 1964.

¹⁵² BRASIL; VERDADE, Comissão Nacional da, 2014a, p. 94

¹⁵³ PARKER, P. R., 1977.

¹⁵⁴ REIS FILHO, D. A., 2000.

¹⁵⁵ Ato Institucional Nº. 5, 1968.

¹⁵⁶ AMNESTY INTERNATIONAL – Brazil: "They Treat Us Like Animals": Torture and ill-treatment in Brazil: Dehumanization and impunity within the criminal justice system, 2001.

system improved itself and became an institution, hitting mainly groups that were seeking to organise the working classes: labour unions, underprivileged neighbourhood associations, and priests and religious representatives that worked among them.¹⁵⁷

Based on the military support, with the crescent investment of foreign capital - and eliminating or neutralising all the opposition forces¹⁵⁸ - the government was able to develop an efficient economic policy to favour the big capital. Without even working on a plan of distribution of income or considering the well-being of most of the Brazilian population, the government created an illusion of development among Brazil's society. As the unemployment taxes went down, the economy got into its highest point in decades and the inflation became under control, which¹⁵⁹ made the "good citizens" (the ones that did not oppose the system) think that militaries in command were doing the right thing on exceeding their control over the media, the politics, the public administration, and so on. This spread a wave of fear, that translated into a false feeling of security,¹⁶⁰ which is one of the main reasons that lead towards the bad reception of Brazil's CNV by part of the society. The reception of the CNV will later be examined in this research, and it shows why some Brazilians still claim for a return of the military dictatorship¹⁶¹, or even have a fond memory of this time.

In 1969 the General Garrastazu Médici became President. At this time, the military dictatorship reached its peak. The censorship was at its highest level, as any cultural manifestation had to be approved in order to be legally exhibited. All the public administration offices were under control

¹⁵⁷ BRASIL; VERDADE, Comissão Nacional da, 2014a, p. 104,

¹⁵⁸ REIS FILHO, D. A., 2000.

¹⁵⁹ STEPAN, A. C., 2015, p. 139-141.

¹⁶⁰ REIS FILHO, D. A., 2000.

¹⁶¹As of 2018, there are still some pro-dictatorship movements, asking for a military intervention in Brazil. It's easy to find videos and photographs like this one where citizens are on their knees claiming for a military intervention in POLITICA ATUAL – De joelhos manifestantes clamam por intervenção no Brasil, 2018.

of the militaries, with a complex repression system, that intimidated union offices, churches, professional organisations and political parties. Any kind of public manifestation was prohibited, and the repressive measures had no limit, going from torture to assassination in order to achieve its purposes.¹⁶²

Battling with the repression, there were two main fronts of resistance actively fighting in Brazil at this time. The first was called *Ação Libertadora Nacional* (ALN) [National Frontline of Liberty]. Its founder was Carlos Marighella, who created the Urban Guerrilla Manual, regarding the urban guerrilla as having a static role to distract the armed forces away from the remote areas and reduce the intensity of the operations against the rural guerrillas¹⁶³ who were seen as the main tool to promote socio-political change. The second frontline of resistance formed the Araguaia Guerrilla War (1966-1974) and was the result of an insurrection planned by the *Partido Comunista do Brasil* (PCdoB) [Brazil's Communist Party], an illegal political party at that time, that wanted to instigate a socialist revolution in Brazil, similar to those of China and Cuba.¹⁶⁴

The Araguaia guerrilla group was formed by medical doctors, nurses, geologists, teachers, lawyers, commercial and banking professionals and, mostly, students. It had eighty-nine members, but since locals from the region also supported the group, the actual number of participants is uncertain.¹⁶⁵

The government's response to the guerrilla was to send troops to the region, in what was the second largest mobilisation of military personal in Brazil's history (even exceeding the number of troops who were sent to the World War II). There were around ten thousand militaries, and they still struggled to suppress the insurrection.¹⁶⁶ After this, a final campaign – from

¹⁶² BRASIL; VERDADE, Comissão Nacional da, 2014a, p. 102.

¹⁶³ MARIGHELLA, Carlos – Manual do guerrilheiro urbano. Clube de Autores, 2010.

¹⁶⁴ REIS FILHO, D.A., 2000.

¹⁶⁵ FILHO, Romualdo Pessoa Campos – Guerrilha do Araguaia: A esquerda em armas, 2012.

¹⁶⁶ KAPPES, Jefferson – A Guerrilha do Araguaia: A luta armada no campo suas consequências históricas, 2017.

October 1973 to September 1974 – offered bounties for the killing or capture of members of the guerrilla, while torture, dismemberment, decapitations and executions were used daily in the process. There is an estimative of 500 local people that were tortured and an unknown number that were killed, added to the official count of 136 deaths.¹⁶⁷

The extent of the political repression to its peak justifies the need of a truth commission, but it also confirms why it took so long for their voices to be heard. The ones that were affected by the military repression were mere members of society: students, local civilians, members of illegal and irrelevant political parties at the time, who were dominated by people with power.

In São Paulo, the military government's response to the guerrillas was different from the ones in remote areas such as the Araguaia's conflicts. The opposition figures were often 'snatched' or arrested, instead of being caught in open conflict. And as they were frequently tortured or killed, their remains were submitted to formal autopsy (creating fake reports to cover the traces of torture) before being buried in organised cemeteries¹⁶⁸, issuing a death certificate that disguised the real cause of death. In São Paulo (the biggest zone of conflict), the victims were often buried in cheap wooden coffins marked with a "T" (for terrorist).¹⁶⁹

These obscure times in Brazil's history only came to an end in 1979, when the president João Figueiredo sanctioned the Amnesty law. The law n. 6.683 benefited 4.650 persons, between rebels, perpetrators and politicians in exile.¹⁷⁰ The controversies of the Amnesty law will be further discussed, as its sanction was a mark on Brazil's history, seen that it started a period of decline of the military dominance.¹⁷¹ As left oriented

¹⁶⁷ BRASIL – Direito à Verdade e à Memória: Comissão Especial sobre Mortos e Desaparecidos Políticos, 2012.

¹⁶⁸ BRASIL, 2012.

¹⁶⁹ PROJETO MARCAS DA MEMÓRIA, 2012.

¹⁷⁰ BRASIL; VERDADE, Comissão Nacional da, 2014a, p. 106.

¹⁷¹ GASPARI, Elio. A ditadura encurralada. São Paulo: Companhia das Letras, 2004, p. 22.

political parties started to rise and in 1980, a law project that established direct elections was unanimously approved.¹⁷² In 1984, more than one million people went to the streets to ask for direct elections, starting a movement called “*Diretas já*”.¹⁷³ The militaries had lost their power over the congress and in 1985 Tancredo Neves and José Sarney were elected by the national congress to be president and vice-president, in order to lead Brazil into a new democratic rule, that would start in 1988.¹⁷⁴

The military rule left as a legacy a monstrous international debt and a disastrous economic situation, - including a galloping inflation and a severe recession -, along with a complicated relation between civilians and militaries in the public sphere, which had to be resolved in order to transition to a new regime.¹⁷⁵ All these problems, along with the fear of prosecution, the tensions between the political groups, the controversial amnesty law and other important factors led to almost 32 years of silence. At this point, Brazil was just starting to rise as a young democracy, stepping into corpses that were left behind.

4.2- 32 years of silence.

The military rule ended in 1985, but the civil and human rights¹⁷⁶ were only formally restored by the new constitution of 1988¹⁷⁷. During these 3 years of transition, there were no attempts of establishing an official truth commission to investigate the human rights atrocities that occurred in the former regime. As it was shown before, the ones who were affected by the repression were characterised as terrorists, communists that were against the political order, so they were left behind as the country advanced towards a new democracy.¹⁷⁸

¹⁷² BRASIL; VERDADE, Comissão Nacional da, 2014a, p.107.

¹⁷³ DELGADO, L. de A. N., 2007.

¹⁷⁴ SKIDMORE, T. E.; SILVA, M. S., 1988. p. 486.

¹⁷⁵ BRAZIL. CNV, 2014a, p. 109.

¹⁷⁶ DE CARVALHO, José Murilo, 2001, p. 209.

¹⁷⁷ Constituição da República Federativa do Brasil de 1988, 1988.

¹⁷⁸ REIS FILHO, D. A., 2000.

The amnesty law extinguished the individual criminal responsibilities of both sides involved in the conflicts. But was this enough to achieve a closure with these past abuses? This is put into question, as the law also had a deterrent effect: creating a barrier that concealed any attempts to criminally prosecute the militaries.¹⁷⁹

In the thirty-two years that followed the fall of the military rule on 1985, the successor democratic governments took a few steps to identify the victims and offer restitutions to their relatives. Between 1995 and 2011 governmental bodies were established in order to investigate the alleged human rights violations of the military government, such as the *Comissão Especial de Mortos e Desaparecidos Políticos* (CEMDP) [the Special Commission on the Political Dead and Disappeared]¹⁸⁰, and the *Secretaria Nacional dos Direitos Humanos* (SNDH) [the National Human Rights Secretary]¹⁸¹. Although these bodies focused on the accountability of these human rights abuses, their objectives were limited to clarifying the cases of human rights abuses and finding evidences on causes of death, concealment of bodies, and other information regarding these human rights violations, with no motivation towards having the perpetrators accountable for their crimes.¹⁸²

In February 1978, the *Comitê Brasileiro pela Anistia* (CBA) [Brazilian committee for Amnesty] was founded to extend the amnesty process to political prisoners and exiled citizens. But they pointedly did not want to include amnesty for the perpetrators of human rights abuses, and despite the disapproval of the population, the National Congress passed the

¹⁷⁹ GUIMARÃES, M. A., [et al.], 2017.

¹⁸⁰ Lei nº 9.140, de 04 de Dezembro de 1995, Reconhece Como Mortas Pessoas Desaparecidas em Razão de Participação, ou Acusação de Participação, em Atividades Políticas, no Período de 2 de Setembro de 1961 a 15 de Agosto de 1979.

¹⁸¹ Decreto nº 2.193, de 7 de abril de 1997, Aprova a Estrutura Regimental do Ministério da Justiça.

¹⁸² MEZAROBBA, G. 2016, p.115-116.

amnesty law to all of those who between 2 September 1961 and 15 August 1979 committed political crimes or crimes with political motivation.¹⁸³

The amnesty law emerged as an attempt to re-establish relations between the military officers and regime opponents, including those who had been removed from the office, imprisoned, banished or exiled. Because it invoked notions of harmonisation and pacification, even people against the regime saw it as a way to deal with the impasse, in order to contribute with a future transition to democratic rule.¹⁸⁴ But the law actually prioritised oblivion and the negation of truth, besides creating a tremendous obstacle for accountability because of its lack of specification on the range of the term 'political crimes'. Since the term was open to interpretation, it was used as a way to guarantee impunity for state agents who committed serious human rights violations.¹⁸⁵

In 2009 the *Terceiro Programa Nacional de Direitos Humanos* (PNDH-3) [Third National program of Human Rights] was published, containing a series of measures to be achieved in order to develop the human rights scenario in Brazil. The programme also contained an initiative to revise the 1979 Amnesty Law, and was spearheaded by Dilma Rousseff¹⁸⁶, who was serving as minister in the Casa Civil at that time. This initiative was presented to Luis Inácio Lula da Silva (Brazil's president at that time) and Published in 2009, but it didn't please the three military commanders or the minister of defence, who threatened to submit

¹⁸³ Our translation: 'Art. 1st Amnesty is granted to all those who during the period from 2 September 1961 to 15 August 1979, committed political crimes or crimes interconnected to electioneering crimes, to those who had their political powers suspended and to the direct and indirect employees, from foundations linked to the public power, to the state officers from the legislative and judiciary, to the militaries and to the union leaders and representatives, that were punished based on any Institutional, and complementary Act (all vetted). §1st - Interconnected crimes, for the effect of this article, are all those of any nature that are related with political crimes or practiced by public motivation.' Lei N° 6.683, de 28 de agosto de 1979.

¹⁸⁴ MEZAROBBA, G. 2016, p. 107.

¹⁸⁵ MEZAROBBA, G. 2016, p. 107.

¹⁸⁶ Dilma Vana Rousseff is Brazil's former president from 2011 to 2016. She is also one of the survivors of the military rule. She was part of the resistance movement and was tortured and held captive by the militaries. See more in: <<http://dilma.com.br>>.

resignation letters.¹⁸⁷ At that time, Lula da Silva appeased the commanders and the minister of defence, offering to review the text of the Third National program of Human Rights.

Tensions from both sides were formed. The international human rights organisation, Global Justice, threatened to denounce Brazil before the Organization of American States (OAS) and the United Nations (UN) if the PNDH-3 was not enforced, as it described the situation as a risk to democracy,¹⁸⁸ saying that the program was altered after military forces blackmailed the president. The former minister of Human Rights, Paulo Sergio Pinheiro, who was a member of the group set up to modify the proposal, condemned the blackmailing of the president, although he denied that the changes in the PNDH-3 would affect the later works of the CNV.¹⁸⁹

Besides the process of amnesty, another factor that led to the lack of accountability is that, in Brazil, serious crimes (such as torture, rape and homicide), are classified as 'crimes of public initiative'. This means that only the Public Prosecutor's Office has the responsibility to initiate such cases, and the prosecutors failed to do so. More so, private individuals, like families and relative of the victims, have very limited powers to attempt or challenge such inactivity of the public system, and if they do decide to claim their rights, they have to do it through the Public Prosecutor's Office, which is free to decide if their complaints have merit.¹⁹⁰

The media was also a significant obstacle on the accountability of human rights abuses in Brazil. They exploited the governmental crisis that occurred in 2010, not only to attack the original proposal for the CNV, but also to discredit the government of Lula da Silva, as the Brazilian media is largely privately owned and often portrayed as conservative.¹⁹¹ On 13

¹⁸⁷ BERTAZZO, Juliana. *Brazilian Security and Defence Policy under President Dilma Rousseff: Transition and Initial Challenges*, 2012, p. 815.

¹⁸⁸ BERTAZZO, J., 2012 p. 816.

¹⁸⁹ MEHL, Gustavo – EBC: Justiça Global denunciará Brasil na OEA e na ONU se o PNDH for revisto, 2010.

¹⁹⁰ SKAAR, E.; GARCIA-GODOS, J.; COLLINS, C., 2016. p. 109.

¹⁹¹ SKAAR, E.; GARCIA-GODOS, J.; COLLINS, C., 2016. p. 109.

January 2010, the magazine *Veja* (one of the biggest magazines in Brazil) published an article entitled *Coisa de maluco* ['Matter of a madman']. The article had a picture of Paulo Vannuchi, the Brazilian Minister of Human Rights at the time, with the caption 'Not Human: The Federal minister Paulo Vannuchi, ex-militant of a terrorist group and drafter of that decree: if it did not work with a revolver, he'll do it with a pen'. This headline satirizes the PNDH-3 created by Vannuchi, which contains 521 suggestions to improve the human rights situation in Brazil, with a key proposal to create the CNV.¹⁹²

In April 2010, Brazil's Supreme Court ruled a decision on the ADPF 153¹⁹³, an action regarding the human rights abuses from the military dictatorship that was filed by the Federal Council of the Brazilian Bar Association. The action discussed the Article number 1 of the amnesty law, that granted amnesty to crimes of any nature, as long as they were either related to political crimes or practiced by public motivation.¹⁹⁴ The action questioned if the law was well received by the national constitution of 1988 and the range of the amnesty that was granted. Brazil's Supreme Court decided to maintain the amnesty law, ruling that it was a tool used in transition to the new democracy, achieving its conciliatory purposes.¹⁹⁵ The ruling closed the possibilities of punishment even further, and went against the decision of the Inter-American Court of Human Rights on the process filed by the families of the missing.¹⁹⁶

Finally, in October 2014, the Inter-American Court of Human Rights of the Organisation of American States resolved that its ruling to the

¹⁹² SCHNEIDER, N., 2011, p. 164.

¹⁹³ ADPF. 153 known as *Arguição de Descumprimento de Preceito Fundamental* [Pleading on Violation of Fundamental Principle], is an action that can be submitted to Brazil's Supreme Court to discuss cases where fundamental principles and guarantees are violated. See more in CARRILHO JUNIOR, Paulo Almeida. *ADPF - Arguição de descumprimento de preceito fundamental. Conceito de preceito fundamental. Fundamento lógico-transcendental da validade da constituição jurídico-positiva*, 2011.

¹⁹⁴ Lei Nº 6.683, 1979.

¹⁹⁵ BRAZIL. Supremo Tribunal Federal. *Arguição de Descumprimento de Preceito Fundamental n. 153. Inteiro Teor do Acórdão*, 2010.

¹⁹⁶ GOMES-LUND et al. (*Guerrilha do Araguaia*) v. Brazil, Inter-American Court of Human Rights (IACrHR), 24 November 2010

process on the Araguaia War - which was to punish the perpetrators responsible for the violations and to apply the penalties provided by law - wasn't complied by the Brazilian government..¹⁹⁷ Because of that, the Brazilian government had violated the Articles 1(1), 4, 8, 12, 13 and 25 of the American Convention on Human Rights¹⁹⁸ and Articles I, XXC and XXVI of the American Declaration of the Rights and Duties of Man (as Brazil was signatory of these conventions he was responsible for protecting them).¹⁹⁹ These articles are related to rights to liberty, security and life, as well as the due legal process and fair trial, equality before the law, and freedom of conscience, though, religion and expression.

The Court also resolved on the Amnesty law that granted immunity to the offenders even though their crimes were imprescriptible, stating that the law continues to interfere with their criminal liability even though the officers committed abuses that were incompatible with the American Convention on Human Rights.²⁰⁰

The facts above exposed lead to the identification of barriers of accountability in Brazil, such as the existence of a culture of impunity; processual barriers from within the judiciary branch; the myth that the militaries were in a "civil war" against "terrorist groups"; and the lack of an efficient vetting process – permitted the state to be influenced by those who were guilty of these past events.

Despite all these barriers, however, the early works of the CNV would start in the subsequent months. As we move forward to analyse the road to accountability, it's necessary to point out the attempts to investigate these massive human rights abuses, in order to know the ground on which the commission was set.

¹⁹⁷ CONECTAS, Direitos Humanos – Comissão Nacional da Verdade na OEA, 2015.

¹⁹⁸ American Declaration of the Rights and Duties of Man, 1948.

¹⁹⁹ Inter-American Commission on Human Rights of the Organization of American States, American Convention on Human Rights, 1969.

²⁰⁰ Lei Nº 6.683, 1979.

4.3- Starting to heal, the road to accountability.

After the end of the military dictatorship, a healing process - along with its challenges - was left aside while Brazil moved towards establishing a new Democratic government. In that sense, the amnesty law created a feeling of impunity in Brazil's society. As this research moves forward to analyse the CNV's proceedings, it is necessary to clarify the works of the investigatory bodies and other entities that contributed to the accountability of the past human rights abuses during the dictatorship. Their contribution was acknowledged by the CNV],²⁰¹ and used as a starting point to the process of unveiling the truth.

When Brazil started a new democracy, names were thrown into oblivion, along with their reputation, as they were seen as terrorists who went against the political order. Those people's families were humiliated and had nowhere to claim their rights, since the government did not want to start an official body to investigate these crimes. In that context, under the pretext of reviewing cases for the new amnesty law, a group of lawyers gained access to the transcripts of cases brought before the military courts between 1964 to 1979, initiating an unofficial truth project.²⁰²

Soon it became clear that the archives were not well monitored, and the lawyers involved in the investigation process started to copy the entire archive of the military cases (more than a million pages). With these files, they formed a 2,700 pages investigative report, named *Brasil: Nunca Mais* [Brazil Never Again]. This was the first attempt to account the massive human rights abuses.²⁰³ The whole process was made in secrecy. Those who were photocopying the documents had no idea of the significance of their actions, and all the photocopies were transferred to concealed places, together with a microfilm copy that was later sent to a place outside Brazil

²⁰¹ BRAZIL. CNV, 2014^a, p.23.

²⁰² GOMES-LUND et al., 2010, p. 1006.

²⁰³ BAUER, Caroline Silveira. A produção dos relatórios Nunca Mais na Argentina e no Brasil: aspectos das transições políticas e da constituição da memória sobre a repressão, 2008.

to ensure that the information would be secure. There was no publicity or marketing strategies for the report, and the only author credited was Cardinal Paulo Evaristo Arns, from the Archdiocese of São Paulo.²⁰⁴

The archive was initially 6,946 pages, separated in a twelve-volume series of data, but two professional journalists made a concise version to be published, so it could be accessible to the general public. The book was launched across the nation on 15 July 1985, together with an English translation named “Torture in Brazil”.²⁰⁵

Brasil: Nunca Mais proved that torture was the basis of the military “justice system”, and all the authorities were aware of its use in order to extract confessions. The book remained on the bestseller list for twenty-five weeks. Although the project had a list of 444 torturers that were named in the military courts, their names were excluded from the publication due to the volatile political climate at that time.²⁰⁶ The list was eventually released to the public, and some of those names were removed from public offices, demoted or block from promotion.²⁰⁷ This unofficial truth project is best understood as an attempt to replace a Truth commission, as it was unlikely, at that time, to establish an official body. But the torturers exposed by *Brasil: Nunca Mais* have never been held directly accountable for their crimes.²⁰⁸

When it first emerged, in 1978, the amnesty movement called for the members of Brazil’s security forces to be criminally responsible for their crimes, but since the end of the military rule this demand has gradually disappeared, even from the public discourses of the victims and their families. This shows that the feeling of impunity and the lack of faith in the

²⁰⁴ BICKFORD, Louis. Unofficial truth projects, 2007, p. 1006.

²⁰⁵ WESCHLER, Lawrence. A miracle, a universe: Settling accounts with torturers, 2007, p. 9

²⁰⁶ BICKFORD, L., 2007, p. 1007.

²⁰⁷ WESCHLER, L., 1990. p. 76

²⁰⁸ Filho, R. P. C., 2012.

legal system are a reflex of the military's regime success in persuading the society to forget about the human rights atrocities.²⁰⁹

In 1996, a state-run commission called *Comissão Especial sobre Mortos e Desaparecidos Políticos* (CEMDP) [Special Commission on the Dead and Disappeared for Political Reasons] was created by the Law of Disappeared as a form to do accountability of those who were murdered by the dictatorship. The members of the CEDMP represented a diverse group. They were appointed by the president and included representatives from the armed forces, the Federal Prosecution Service, from victims' families, the armed forces, the Foreign Ministry, civil society organizations, and the Human Rights Commission of the Chamber of Deputies.²¹⁰

The CEMDP was set up as an agency of the Brazilian state, not directly subordinated to the government. It operated more independently with a mandate aimed to acknowledge the cases of disappearances that were not listed in Appendix I of the Law of the Disappeared, locating their bodies and assessing requests for compensations.²¹¹ Initially the CEMDP focused on obtaining death certificates for the victims, because in most cases, they were either forged in order to hide the true causes of death, or didn't even exist. Also, the amnesty law only allowed for a 'declaration of absence' to be issued for disappeared persons, which could be used as a certificate of presumption of death - for the purposes of resolving inheritance issues and dissolving marriages.²¹²

The CEMDP's did not investigate the causes of death, nor did it hold the perpetrators accountable for their crimes. Its work focused on the disappeared, by creating a DNA database with the blood of the victims' families, issuing death certificates, gathering information on the possible location of clandestine graves (especially in the region of the Araguaia

²⁰⁹ MEZAROBBA, Glenda – O preço do esquecimento: as reparações pagas às vítimas do regime militar (uma comparação entre Brasil, Argentina e Chile), 2008.

²¹⁰ SANTOS, Sheila Cristina – A Comissão Especial sobre Mortos e Desaparecidos Políticos e a reparação do Estado às vítimas da ditadura militar no Brasil, 2008.

²¹¹ Lei N° 9.140, 1995.

²¹² SANTOS, S. C., 2008.

river) and improving the scientific accuracy in the identification of mortal remains and skeletons.²¹³ Its contribution to truth was recognised through a publication called *Direito à memória e à verdade* [Right to Memory and Truth], which summarises the work of the CEMDP, presenting stories of the fatal victims of the dictatorship. It was the first official document of the Brazilian state to impute to members of the security forces (in a general way, not as individuals) the crimes of torture, dismemberment, decapitation, rape, concealment of corpses and the murder of defenceless opponents who already were in jails,²¹⁴ besides discrediting earlier official propagandas that the victims committed suicide or were killed because they attempted to escape while imprisoned, or during armed confrontation with the police.²¹⁵

In 2001, a list of named torturers was presented before the United Nations Committee Against Torture by a Brazilian NGO called *Tortura Nunca Mais* [Torture Never Again]. The Brazilian government, under the pressure of the UN, promised to investigate the matter, but there was no official action about it, even after the list was refined to contain only the torturers that still held a high position in the state office.²¹⁶ As a result of this attempt, Amnesty International described Brazil's lack of accountability as "a telling case study of how total impunity for human rights violations under military rule (1964-1985), has led to a culture of impunity, to the extent that it threatens the very rule of law"²¹⁷. As of today, with the exception of a case that occurred in 1997, where two police and eight military officers were sentenced by a military court for torturing fourteen soldiers (four of whom died as a result), no State agent (civilian or military), has ever been punished for past human rights violations.²¹⁸

²¹³ SKAAR, E.; GARCIA-GODOS, J.; COLLINS, C., p. 106.

²¹⁴ CEMDP – Comissão Especial Sobre mortos e Desaparecidos Políticos. *Direito à Verdade e à Memória*, 2007.

²¹⁵ SANTOS, S. C., 2008.

²¹⁶ COIMBRA, Cecília Maria Bouças – *Práticas psi e tortura no Brasil*, 2001, p.70.

²¹⁷ AMNESTY INTERNATIONAL, 2001.

²¹⁸ SKAAR, E.; GARCIA-GODOS, J.; COLLINS, C., 2016, p. 109.

When Lula da Silva became president, representing those who were victims of the military dictatorship, he established a working group to draw the law that would create an official truth commission, sponsored by the government. With a strong support of the society, the CNV was created under the Law 12.528, and was approved unanimously at the end of the president's term.²¹⁹ However, the works of the CNV only started on 16 May 2012, when the new president, Dilma Vana Rousseff, launched the National Truth Commission in a ceremony attended by her four civilian predecessors.²²⁰

Rousseff was a former political prisoner, and a survivor of torture. In her speech, she called upon Brazil's society to acknowledge and understand the country's full History.²²¹ The work of the CNV started as a hope for those who had been forgotten, as it aimed to finally acknowledge the factual history of Brazil's military dictatorship, name torturers and victims, show the truth, and publicly recognise the suffering of those who lived through decades of impunity.

This chapter enabled the introduction of some of the challenges faced by the CNV, including the need to break an immaculate perception of the military dictatorship that was spread through Brazil's society.²²² One of the biggest challenges of the commission is to rewrite the historical narratives of the country's past. But it also shows the actual impact of its work.²²³ With this clear historical background of the events that led to the works of the CNV, this research moves on to analysing the procedural aspects of Brazil's CNV.

²¹⁹ SKAAR, E.; GARCIA-GODOS, J.; COLLINS, C., 2016, p. 117.

²²⁰ BRASIL; VERDADE, Comissão Nacional da – A Instalação da Comissão Nacional da Verdade, 2012.

²²¹ Her speech, translated by Mezarobba, G. in SKAAR, E.; GARCIA-GODOS, J.; COLLINS, C., 2016, p.118: 'Ignoring history does not pacify; on the contrary, it keeps sorrow and rancour latent. Disinformation does not help to appease - it only enables intolerance to flourish. Shadows and lies cannot promote peace. Brazil deserves the truth. The new generations deserve the truth and, more than anything, those who lost friends and relatives, and who continue suffering as if they were dying again and again, every single day, deserve the factual truth.'

²²² REIS FILHO, D. A., 2000.

²²³ BAKINER, Onur. – Truth commission impact: An assessment of how commissions influence politics and society, 2014.

5 - Brazil's Truth Commission (CNV).

To meet the challenges of transitional justice, a society must establish, investigate and publicly disseminate the truth about past human rights abuses.²²⁴ To achieve that, truth commissions emerge to present the factual information, or what Alex Borraïne - who served as the Vice President of South Africa's Truth and Reconciliation Commissions - calls "forensic truth".²²⁵ This research has so far explored the road towards achieving this forensic truth, explaining the evolution of transitional justice itself and showing the different aspects and challenges of truth commissions as they evolved through time.

After tracing this background on transitional justice and focusing on the truth commissions as a mean to both achieve accountability and deal with past human rights abuses, the research showed how the events in Latin America shaped transitional justice internationally. Earlier chapters also explored the foundations of the massive human rights abuses in Brazil, clarifying the historical and socioeconomic factual information that led into the need to create the CNV, and studying some of the early works of the commission while giving attention to the initiatives that came before the instalment of this official body.

This chapter will, therefore, analyse the proceedings and the structure of Brazil's truth commission, as it goes through the aspects that guided its work and defined its mandate. From its creation process to the publication of its final report, this study will clarify questions like what the main objectives of Brazil's CNV were; if its mandate had the powers required to achieve them; and what were the positive and negative impacts of the CNV's technicalities.

²²⁴ CROCKER, D., 1998, p. 225.

²²⁵ See more about the term Forensic Truth on ROTBERG, Robert I.; THOMPSON, Dennis. – Truth v. justice: The morality of truth commissions, 2000.

To answer these questions, it is essential to look deeply into the CNV's structure with a critical approach, in order to set the grounds to move towards the analysis of its impact and effectiveness. The mandate of a truth commission specifies an array of violations to be examined by the commission and settles the logistical and organizational issues – such as sources of funding and the time period of investigation –.²²⁶ which are the foundations of its work. Therefore, by showing all the technical aspects of the CNV – from its objectives and powers to its mandate –, it is possible to understand the outreach of the commission, as well as the limits that were imposed to it.

It is also mandatory to go through an analysis of the truth commission's staff, their influence and relevance on society while paying attention to the fact that the commissioners are appointed by political decision makers. In that sense, it is important to analyse their role and if they appease the social pressure on establishing an impartial truth-finding procedure.²²⁷ Another crucial point in that analysis is the time period for investigation and its importance for the process of investigation. Did the commissioners have enough time to achieve their goals?

Finally, it is significant to show the transparency of the process and how the access to its proceedings was done, while keeping in mind that one of the key claims of truth commissions is to pay attention to experiences and memories that were forced into oblivion.²²⁸ Did the CNV promote accessibility to the general public? All the above mentioned will be essential to examine the Final report, allowing us to judge its proximity to the public, and how the recommendations were traced. These technicalities are important to evaluate the works of a Truth Commission, as they are multi-factor bodies that seek to transcend the existing data of

²²⁶ BAKINER, O., 2014, p. 49.

²²⁷ BAKINER, O., 2014, p. 51.

²²⁸ BAKINER, O., 2014, p. 73.

social memory, showing a way to grant access and visibility to individuals and social groups that were silenced by powerful dominant figures.²²⁹

5.1- The CNV's structure.

The impact of the CNV and its efficiency in dealing with the past emerges in this section, with an analysis on the commissions' trajectory as a way to identify some important elements that will later trace the effectiveness of its work. These elements are the civil-society participation; the positive and negative aspects of its proceedings; how the truth commission overcame the obstacles that appeared during the mandate; the impartiality of its work, among others, and they will set the ground for a later critical approach on the truth commission's impact.

Truth commission impact is the consequential effect of a truth commission on judicial processes, government policy, social norms, and society. It has a direct causal effect, operated regardless of other simultaneous outcomes of post conflict institutions and other transitional justice tools.²³⁰ But to exactly identify the causal effects of the truth commission on society, the state and the judicial system, it is first mandatory to holistically understand its proceedings and structure.

This section aims to identify key components of the truth commission that can bring a critical approach to all plausible causal explanations of how it was able to produce impact in society.

5.1.1 - Objective, powers and mandate.

Brazil's National Truth Commission was established through an action of Brazil's legislative power, which makes a significant difference

²²⁹ BAKINER, O., 2014, p. 73.

²³⁰ BAKINER, O., 2016, p. 87.

from other Latin-American truth commissions.²³¹ It was a presidential decree from President Dilma Rousseff²³² that officially started the works of the CNV. While this might seem positive, it actually is one problematic aspect of its formation. Generally, the commission's creation should be ratified by the Congress rather than inaugurated by a presidential decree, however, its installation was contested through different political groups within the state. In that sense, it is important to keep in mind that the political scenario in Brazil still had a strong presence of many members of the dictatorship, as there were no vetting processes through the years that followed the end of the military rule.²³³

Another result of these political tensions was that the legal mandate of the CNV was therefore adapted to ensure its ratification, which is shown by the change of terms like “political repression” to “political conflict”.²³⁴ There was also a change in the timeframe of the investigation, as it covered a period beyond the dictatorship (1964-1985), from 1946 to 1988. That seems to be a manoeuvre to disguise its focus on the dictatorship years,²³⁵ especially because, after the establishment of the CNV, the commissioners officially decided to aim their work on the period of the military rule.²³⁶

These frictions within the government are a reflection of the extent to which Brazil is trying to come to terms with the legacy of the military rule. This is a direct result of the collective culture of denial, where memory was reduced to a private remembrance of families affected by the political repression.²³⁷

The CNV's main objective, according to law 12.528, was to realise the right to historical memory and truth, in order to promote national

²³¹ The Truth commissions created by an Action of the Executive Power in latin-america are the ones in: Argentina, Uruguay, Chile, Panama, Peru, El Salvador and Guatemala. Found in: GONZÁLEZ, E., 2012 p. 2.

²³² SKAAR, E.; GARCIA-GODOS, J.; COLLINS, C., 2016, p.118.

²³³ STEPAN, A. C., 2015.

²³⁴ SCHNEIDER, N., 2011.

²³⁵ SCHNEIDER, N.; DE ALMEIDA, G. I., 2018. p. 640.

²³⁶ SKAAR, E.; GARCIA-GODOS, J.; COLLINS, C., 2016, p. 118.

²³⁷ SCHNEIDER, Nina – Breaking the ‘silence’ of the military regime: New politics of memory in Brazil, 2011, p. 199.

reconciliation'²³⁸. To achieve them, its mandate was established with powers to clarify cases of enforced disappearances, torture and concealment of corpses, inside and outside national territory; identify perpetrators, whenever it was possible; reveal the locations, structures, institutions, circumstances, and the consequences of the massive human rights abuses; and forward to the prosecutors' office or the judiciary any relevant information that could be helpful in locating the mortal remains of the victims.²³⁹ The law also defined the competence of the CNV, declaring that it could investigate all the serious human rights violations practiced in the time frame of 1946 to 1988, to clarify the factual circumstances even if the crimes were committed outside national territory.²⁴⁰

The competence to investigate violations that occurred outside national territory opens the possibility to investigate crimes that happened not just as a result of persecution or homicides, but also crimes that were indirectly caused by other abuses - such as the exile - or as a result of any cooperation of the oppressive regimes at the time.²⁴¹ This shows how ambitious the CNV was, as it refers to serious human rights violations that occurred on a spectre of more than forty-two decades, in any part of the world, as long as they were committed to Brazilian citizens and as a result of the political processes of that period in history.²⁴²

This extended time frame, the scope to investigate crimes even outside national territory, and the restrained resources (only seven commissioners), were deeply problematic circumstances. The CNV was actually projected to be something bigger than its reach, which shows a bigger focus on appearances than on the real needs of the process of investigation. This will be proven in the next section of this research, as we go to the analysis of the CNV's staffing.

²³⁸ Lei nº 12.528, 2011.

²³⁹ Lei nº 12.528, 2011, Article 4,

²⁴⁰ Lei nº 12.528, 2011, Article 1.

²⁴¹ GONZÁLEZ, E., 2012, p.9.

²⁴² GONZÁLEZ, E., 2012, p.7.

5.1.2- Staffing.

The Commission was composed of seven members appointed by Dilma Rousseff (Brazil's President at the time). This decision to arbitrarily choose the members of the commission set aside any participation of society's groups and families of the victims, who actively worked through the years that preceded the CNV's creation on the accountability of the past human rights violations during the dictatorship.²⁴³ As a reaction to this lack of public participation, protests and public manifestations were organized by some families of the victim's groups, showing their discontentment with the selection process.²⁴⁴

Because of that, the members were required to be recognised by their work in the defence of human rights, democracy and constitutional institutions. Although that was achieved, the lack of public participation perpetuates a feeling of neglect that could be avoided. This can be confirmed by an official document published by the ICTJ and the Amnesty Commission, stating that the commissioners should have been selected through a transparent selection process, preferentially with a consultation that promoted the participation of different sectors of the civil society, specially victims and other vulnerable groups.²⁴⁵

The nominated members were Claudio Lemos Fonteles, former general attorney of the Republic; Gilson Langaro Dipp, minister of the Superior Tribunal of Justice; José Carlos Dias, lawyer of political prisoners and former minister of justice; José Paulo Cavalcanti Filho, lawyer and former minister of justice; Maria Rita Kehl, psychoanalyst and journalist; Paulo Sergio Pinheiro, professor of political sciences at the University of

²⁴³ SKAAR, E.; GARCIA-GODOS, J.; COLLINS, C., 2016, p. 119.

²⁴⁴ WESTHROP, Amy Jo; GUERNICHARO, Luciana Peluzio; SIMI, Gustavo. Comissão Nacional da Verdade: balanços e perspectivas da finalização de seu processo político institucional. Instituto de Estudos da Religião. Rio de Janeiro, 2015, p. 22.

²⁴⁵ GONZÁLEZ, E., 2012, p 15.

São Paulo (USP); and Rosa Maria Cardoso da Cunha, criminal lawyer and advocate of political prisoners. In October 2012, Gilson Dipp stepped aside from his position due to health problems, and in June 2013, Claudio Fonteles renounced his position as a CNV member, being substituted in September by Pedro Bohomoletz de Abreu Dallari, lawyer and professor of international law in the Institute of International Relations at USP.²⁴⁶ It's noticeable that most of the commissioners (five) were legal experts,²⁴⁷ which left historians, experts for the armed forces and investigative journalists aside, being another problem in the CNV.²⁴⁸

Truth commissions are multi-disciplinary bodies, that need a diverse group of experts and representation from different sectors of the society. This becomes clear as the final report of the commission was not an attractive source of information to the general public, which could be due to the lack of investigative journalists.²⁴⁹

On the other hand, aside from these official members, there were 217 collaborators directly involved in the works of the CNV, including assessors, public employees, consultants, researchers, technical and administrative assistants, interns and volunteers. They worked in the head office in Brasilia, and offices in Rio de Janeiro and São Paulo.²⁵⁰ This was a positive point in the truth commission's staff, as Brazil is a continental country and the military repression affected its entire territory, making the role of holding all these historical facts accountable an impossible task to be done by only seven commissioners.

The CNV's staff was organised into 13 different working groups, each focusing on a distinct theme.²⁵¹ The Commission conducted 80 public

²⁴⁶ BRASIL; VERDADE, Comissão Nacional da, 2014a, p. 49.

²⁴⁷ SCHNEIDER, N. de A., G. I., 2018, p. 640.

²⁴⁸ BAKINER, O., 2015, p.51.

²⁴⁹ SCHNEIDER, N. de A., G. I., 2018, p. 645.

²⁵⁰ BRASIL; VERDADE, Comissão Nacional da, 2014a, p. 49.

²⁵¹ Our translation of the themes: 1) dictatorship and gender; 2) Araguaia; 3) contextualization, foundations and reasons for the military cue of 1964; 4) dictatorship and the Justice system; 5) dictatorship and the repression with the labor unions; 6) structure of the repression; 7) deaths and disappearances; 8) serious human rights violations in the countryside or to indigenous

audiences and hearings in 14 of the 26 states, and the federal district. The importance of starting these activities was clear as the CNV's creation highlighted the latent demand for truth, encouraging the creation of 100 other state or institutional truth commissions around the country²⁵². These local commissions were a really positive initiative, making Brazil a pioneer in launching the system of local truth commissions, a completely new development in the history of truth commissions.²⁵³ However, although the CNV's mandate enabled it to coordinate its work with other public agencies and institutions, such as the CEMDP, the Amnesty Commission, and the National Archives,²⁵⁴ it only signed official collaboration agreements with 43 of these commissions.²⁵⁵

Many local commissions provided information and supported the works of the CNV, broadening the scope of its work, but others challenged, criticised and contested its findings.²⁵⁶ An example of conflicting commissions was the dispute between the CNV and the Vladimir Herzog municipal truth commission of São Paulo, which raised doubts on the circumstances that led into the death of former president Juscelino Kubitschek. His death is officially stated as caused by a car accident, based on hearings and evidences collected in 1996, but the local commission opened the case and reached the conclusion that the former president was actually murdered in a politically motivated crime²⁵⁷. The final report of the CNV rejected the findings of the local commission, arguing that it lacked

people; 9) Operation Condor; 10) the role of the churches in the dictatorship; 11) military persecutions; 12) violations of human rights to Brazilians outside national territory; 13) the military-dictatorial State. BRAZIL; BRASIL; VERDADE, Comissão Nacional da, 2014a, p. 51.

²⁵² SKAAR, E.; GARCIA-GODOS, J.; COLLINS, C., 2016, p. 119

²⁵³ These local truth commissions followed their own time-line, with no direct attachments to the CNV, continuing or starting their work even after the delivery of the CNV's Final Report. At the time of the final report, there were more than 100 local commissions acknowledge by the CNV in BRAZIL. BRASIL; VERDADE, Comissão Nacional da, 2014a, p. 23.

²⁵⁴ Lei nº 12.528, 2011. Article 4.

²⁵⁵ SKAAR, E.; GARCIA-GODOS, J.; COLLINS, C., 2016, p. 118.

²⁵⁶ SCHNEIDER, N. DE A., G. I., 2018, p. 641.

²⁵⁷ The local commission found evidence on the coffin of the former president's area. The evidence consisted on a metallic material in the cranial area of the coffin, what could be the remains of a bullet, but the CNV remained with the theory that this material came from the nails in the coffin. To see more information on this conflict, read ABREU, Carmen Regina – A disputa entre as Comissões da Verdade pela versão final sobre a morte de JK, 2016.

sufficient proof.²⁵⁸ The conflict then escalated to a judicial order that was filed in 2014, accusing the CNV of abusing its power. Following the denial of the request on federal court, the local commission publicly criticised the positioning of the CNV for holding the narrative of Kubitschek death as an accident.²⁵⁹

This incident exemplifies that different state-level commissions (that are not directly linked to the national commission, and therefore not subordinated to it) can strongly challenge how the official historical facts ought to be told²⁶⁰, and even get in the way of the investigatory processes. It shows that the initiative to create local commissions was a positive attempt, but the lack of hierarchy could be problematic.

The CNV staffing, along with the pioneer initiative on local commissions, showed the particularities of the CNV and how its formation influenced the investigatory process. Appointing the commissioners is a critical decision on the works of a truth commission, and though the CNV lacked experts from different backgrounds, the choices made by President Dilma Rousseff were based on public figures with a good commitment to human rights protection, showing a positive intention on the formation of the commission.

5.1.3- Time period for investigation.

The CNV, at first, was supposed to have a limited mandate of two years, from 16 May 2012 to 16 May 2014. Due to a request from survivors and relatives, however, President Dilma Rousseff, increased the time in seven months, which meant its mandate officially ended on 16 December 2014, along with the publication of the final report.²⁶¹The short mandate

²⁵⁸ BRASIL; VERDADE, Comissão Nacional da – Caso JK, 2015.

²⁵⁹ SCHNEIDER, N. DE A., G. I., 2018, p. 642.

²⁶⁰ GOMBATA, Marsílea – O descompasso das comissões da verdade, 2014.

²⁶¹ Lei nº12.998, 2014.

conflicted with the large scope of investigation (from 1946 to 1988)²⁶², which raised a question on the actual capabilities of this truth commission to achieve its purpose. Because of that, as previously mentioned in this research, the commissioners ended up narrowing their investigative focus. And another, more apparent, problem that was raised in its creation was the fact that the CNV did not have any time to structure its work, and the commission spent almost one year just to create a *modus operandi* and set a support team that would work along with the commissioners.²⁶³

The designated term of two years (eventually increased by seven months) and the lack of a period to structure the work before the beginning of the activities proved to be insufficient to allow a deep investigation of all the massive human rights abuses committed in a country with continental proportions.²⁶⁴ However, the CNV overcame these limitations, deciding to focus only on the years of the dictatorship, and firming collaboration with other investigative bodies throughout the country.

Bearing that in mind, an analysis of the transparency and access to information in the investigation process is needed.

5.1.4 - transparency and access to information.

The activities of the CNV were widely promoted through the creation of a communication department. This was a very positive initiative, as all the hearings, proceedings and the collecting of testimonials were previously informed to the press, and the members of the commission put themselves at the disposal of journalists.²⁶⁵ The need for that comes from the fact that the media in Brazil is privately owned by conservative companies who tend to be against the human rights promotion. Because

²⁶² Lei nº 12.528, 2011.

²⁶³ WESTHROP, Amy Jo; GUERNICHARO, Luciana Peluzio; SIMI, Gustavo – Comissão Nacional da Verdade: balanços e perspectivas da finalização de seu processo político institucional, 2015, p. 35 and 96.

²⁶⁴ SCHNEIDER, N. DE ALMEIDA, G. I., 2018, p. 640.

²⁶⁵ BRASIL; VERDADE, Comissão Nacional da, 2014a, p. 51,

of that, at the end of the activities, press conferences were organised to do a public follow up of the proceedings, and to clarify any misleading information.²⁶⁶ Furthermore, the CNV published public notes manifesting its position on relevant themes, such as the exhumation of the President João Goulart, in November 2013²⁶⁷; the fifty years of the 1964 coup, in March 2014²⁶⁸; and the response of the armed forces to the CNV's requirement about the investigation on the misuse of its installations as torture centres during the dictatorship, in July and September 2014.²⁶⁹

Whenever it was possible, the CNV recorded all its activities, or at least took videos and pictures to register its work. The media was transmitted through its channels on YouTube²⁷⁰, Facebook²⁷¹, Twitter²⁷², and after 10 May 2013 all its public audiences and hearings were broadcasted live and in high definition through the internet.²⁷³

The CNV also produced a variety of outputs such as a web page containing a series of audio and video recordings, as well as the archives of all the materials gathered by the commission. This was later integrated into the Brazilian national Archives²⁷⁴ along with the reports and outputs of local commissions; artistic and cultural events created in response to the CNV's work; and the media coverage of the truth commission.²⁷⁵

²⁶⁶ SCHNEIDER, N. DE ALMEIDA, G. I., 2018, p. 642.

²⁶⁷ The CNV made a follow-up explaining the historical context, all the proceedings for the exhumation and also including the request of the family (recorded during one of the CNV's public hearings). See more in: BRASIL; VERDADE, Comissão Nacional da – Entenda como será feita a exumação de João Goulart, 2013; BRASIL; VERDADE, Comissão Nacional da – Missão preparatória para a exumação de restos mortais de João Goulart acontece dia 21, 2013.

²⁶⁸ BRASIL; VERDADE, Comissão Nacional da – Comissão Nacional da. Nota da CNV sobre os 50 anos do golpe de 1964, 2014.

²⁶⁹ BRASIL; VERDADE, Comissão Nacional da – CNV requer às Forças Armadas que apurem como instalações militares foram usadas para tortura, 2014.

²⁷⁰ See more in: <https://www.youtube.com/user/comissaodaverdade>

²⁷¹ See more in: <https://www.facebook.com/comissaonacionaldaverdade>

²⁷² See more in: https://twitter.com/cnv_brasil

²⁷³ BRASIL; VERDADE, Comissão Nacional da, 2014a, p. 51.

²⁷⁴ To get access to the National archives, look for BRASIL; VERDADE, BRASIL; VERDADE, Comissão Nacional da – Arquivo Nacional, 2014, on references.

²⁷⁵ BAKINER, O., 2015, p.51.

SCHNEIDER, N. DE ALMEIDA, G. I., 2018, p. 642.

Another measure to get closer to the general public was the creation of an ombudsman agency to: a) receive information and contributions from the citizens; b) attend and direct the general public demands; c) answer the demands presented to the Commission, representing the ones responsible for them; d) structure and maintain the public service mechanisms; e) create and update the management instruments, according to the definitions of the CNV's executive secretary; f) elaborate its own activities schedules; g) assist the witnesses hearings when necessary.²⁷⁶

The ombudsman agency's main objectives were to achieve the administrative transparency of the proceedings, and to serve as a channel to receive collaboration from the public in general. Acting as a mediator between the citizens and the Commission, it aimed to attend the demands for information, and to receive reports about human rights violations that could contribute to the process of investigation. The agency provided many methods of contact, like an institutional email, conventional letters, a face-to-face service, an online form on the CNV's official website, and other forms of access channels.²⁷⁷

All these initiatives on publicizing and giving transparency to the proceedings of the commission were positive ways to handle the public's attention, and to try to include society in the process of investigation. But even though the CNV tried to establish a diverse array of mechanisms to contribute with the investigation, and despite its wide reach, some groups still raised occasional criticisms on the transparency and effectiveness of the participatory mechanisms in the CNV's operations.²⁷⁸

The creation of social media channels, the live broadcasts of the proceedings and the diverse set of participatory mechanisms showed that the CNV was concerned on being accessible to the general public. And when we come to think that one of the key objectives of a truth commission

²⁷⁶ BRASIL; VERDADE, Comissão Nacional da, 2014a, p. 52.

²⁷⁷ BRASIL; VERDADE, Comissão Nacional da, 2014a, p. 52.

²⁷⁸ SKAAR, E.; GARCIA-GODOS, J.; COLLINS, C., 2016, p. 117.

is to give voice to the memories and experiences that were forced to stay in oblivion,²⁷⁹ the possibility to participate of these proceedings was a very positive initiative. However, sometimes the general public does not understand the technical approaches of the commission, or even its purposes, which raises the fact that the general public does not speak the same language of the commissioners, experts and those involved in the works of a truth commission. Because of that, the accessibility of its final report - another important factor - will be further discussed in this research.

5.1.5- Final Report.

The CNV's final report presented four conclusions, but since the first three are interconnected – as they refer to the confirmation that the Brazilian dictatorial State committed serious human rights violations, according to international humanitarian law –, they can be analysed together.²⁸⁰

After being presented with hundreds of narratives and statements of human rights abuses, the CNV concluded that a systematic practice of illegal detentions, tortures, execution, enforced disappearances, and other violations by State agents, especially during the military dictatorship, had taken place.²⁸¹ Based on a pattern that was traced through the investigation of the violations and the chain of command of those actions, the CNV proved that these violations were the result of widespread and systematic actions of the State, which were conceptualised and implemented through decisions arising from the presidency of the republic and the military ministers.²⁸² This conclusion refuted the official statement of the militaries,

²⁷⁹ BAKINER, O., 2016, p.73.

²⁸⁰ First conclusion, which confirmed 'the evidence of massive human rights violations', BRASIL; VERDADE, Comissão Nacional da, 2014a, p. 962.

²⁸¹ Second conclusion, which confirmed 'the existence of a generalized and systematic character of massive human rights violations', BRASIL; VERDADE, Comissão Nacional da, 2014a, p. 963.

²⁸² BRASIL; VERDADE, Comissão Nacional da, 2014a, p. 963.

that justified the human rights violations as being just a few isolated cases.²⁸³

It also asserted that in the face of the magnitude of the repression, that affected all the different levels of the society²⁸⁴ these practices were characterised as crimes against humanity; and though the conclusions of the CNV did not have enforceability to the Judiciary Branch, the juridical value of this document should not be seen as a mere collection of opinions. Therefore, the final report has the quality of an official document, so any decisions that goes against its precepts has to be reasonable and justifiable.²⁸⁵

The last conclusion of the report was that the Brazilian State continues to perpetrate serious human rights violations, following patterns established in the dictatorship. Although there are no political persecutions anymore, the security forces persist on adopting torture, summary executions and enforced disappearances as means to conduct investigations, and as a way of repression to common crimes.²⁸⁶ According to the CNV, this situation is a result of the fact that the serious human rights violations that happened in the past were not properly denounced, and its perpetrators were never held accountable for their actions, creating conditions for the perpetuation of these crimes.²⁸⁷

This was the first time that the Brazilian state admitted its guilt on the massive human rights violations, a good step towards accountability. But the lack of enforceability in the final reports, and the fact that Brazil's legal system does not allow the families of the victims to pursue these crimes in the justice system²⁸⁸, seem to get along with Brazil's impunity culture.

²⁸³ WEICHERT, Marlon Alberto – O relatório da Comissão Nacional da Verdade: conquistas e desafios, 2014, p.96.

²⁸⁴ Third conclusion, "the confirmation of crimes against humanity" in BRASIL; VERDADE, Comissão Nacional da, 2014a, p. 964.

²⁸⁵ WEICHERT, M. A., 2014, p. 97.

²⁸⁶ AMNESTY INTERNATIONAL, 2001.

²⁸⁷ Fourth conclusion, "the persistence of serious human rights violations". BRASIL; VERDADE, Comissão Nacional da, 2014a, p. 964.

²⁸⁸ See Chapter 3, topic 3.2 32 years of silence.

An important point that should have been addressed in the Final Report, but was left aside, is the acts of “terrorism” from activists and opposition parties.²⁸⁹ The commission should have done an official investigation on the speculations of terrorism practices by the activists, which would end with the myth that still perpetuates as a common knowledge in Brazil – that all the activists that opposed the dictatorship were actually practicing terrorist attacks against the civil order, and therefore “got what they deserved”.²⁹⁰

An official investigation on those acts would have been essential, since the victims and their families still have to deal with the stigma of being associated with terrorism practices. The CNV missed the opportunity to officially address this problem, probably due to the fact that they decided to only investigate the crimes that were committed by public agents, and the persons at their disposal, that were supported by or acted with the State’s own interest.²⁹¹ This is a matter that will be further discussed in this research.

Based on these conclusions, the commission traced 29 recommendations. That extensive list of measures raised questions on its effectiveness and applicability. To what point are they positive or negative?

²⁸⁹ GOMES-LUND et al.2010, p. 1006.

²⁹⁰ WEICHERT, M. A. 2014, p.93.

²⁹¹ Our translation: “Article 1: To the National Truth Commission it is only attributed the re-examination and clarification of the serious human rights violations practiced in the time-frame fixated in Article 8 of the Act of the Transitory Constitutional Provisions, by public agents, persons at their disposal, with the support or at the States own interest.” Resolução N° 2, de 20 de Agosto de 2012, 2012.

5.1.6- Recommendations.

In the CNV's final report, 29 recommendations were formulated and officially arranged in 3 different groups: institutional reforms, normative reformulations and follow-up measures.²⁹² To analyse these recommendations, it's possible to separate them into five distinct groups, based on measures that form the core of transitional justice²⁹³. They are: Justice promotion to prosecute those responsible; institutional reforms to guard against recurrence of abuses; truth-telling; reparations to victims; and preservation and promotion of memory.

However, before studying them, it is important to know that these recommendations are interconnected, so most of them can be classified into one or more of these groups. An example is criminal accountability, that can be qualified mainly as a Justice promotion, but has an important role to preservation and promotion of memory and is also important for institutional reforms, as the decisions can be used as a basis for tools such as vetting and lustration. These recommendations can contribute to one or more of these transitional justice measures, especially because, in the end, they all act together to achieve the final objectives traced by the CNV.

5.1.7.1 - Promotion of Justice.

The report has two recommendations directly linked to the promotion of justice. The first states that, due to the recognised occurrence of massive human rights abuses inflicted by the Brazilian State during the dictatorship, characterised as crimes against humanity, there is an obligation to promote

²⁹² BRASIL; VERDADE, Comissão Nacional da, 2014a, p. 962-975.

²⁹³ DE GREIFF, Pablo; DUTHIE, Roger – Transitional Justice and Development. International Development: Ideas, 2013, p. 419—423.

criminal responsibility of the guilty.²⁹⁴ But the recommendation also acknowledges that the precepts of jus cogens (imperative international norms) do not recognise any internal juridical norms that promote impunity over crimes against humanity, genocide and war crimes, even by the ones who were covered by an amnesty law.²⁹⁵ As so, there was a serious pressure on the commission to not argue about this topic, since it deals directly with the amnesty law and its normative force. At the time, Brazil's Supreme Court hadn't ruled over the matter (which had a negative response a few years later²⁹⁶), so there was an immense pressure of politics and judges onto the CNV to wait for this decision before taking any position. However, the CNV assumed a position in this divergence, enforcing the value of the international humanitarian laws and endorsing the need to hold the ones responsible for human rights abuses criminally accountable.²⁹⁷

The mere acknowledgement of the crimes (officially done by the Brazilian state through the process of the CNV and the publication of its final report)²⁹⁸ was a positive step to deal with the past. However, the facts that the commission still battled through this decision, and the Brazilian government hasn't taken any steps towards the accountability of these crimes, make this recommendation another piece of the culture of impunity.

²⁹⁴ The CNV eludes specifically the jurisprudence of the inter-american court of human rights, in special the one that condemned the Brazilian State in the Gomes Lund case, also known as the Araguaia's case, to establish an investigation and to start a criminal process to hold accountable those who were responsible for the human rights abuses during the dictatorship years. The decision in english can be found at:

<http://www.corteidh.or.cr/docs/casos/articulos/seriec_219_ing.pdf> BRASIL; VERDADE, Comissão Nacional da, 2014a, p. 965.

²⁹⁵ There is an observation at this point, telling that the commissioner José Paulo Cavalcanti had a divergent opinion from the other commissioners, because according to Brazil's Federal Supreme Court, it is impossible to punish the perpetrators, due to the Amnesty law. This decision came from the result of the ADPF nº 153, previously cited in this study. BRASIL; STF, 2010.

²⁹⁶ This negative decision eludes the Supreme Federal Court's decision on the BRASIL; STF, 2010.

²⁹⁷ Recommendation Number 2, BRASIL; VERDADE, Comissão Nacional da, 2014a, p 965.

²⁹⁸ Second conclusion, which confirmed 'the existence of a generalized and systematic character of massive human rights violations', BRASIL; VERDADE, Comissão Nacional da, 2014a, p. 963

The second recommendation was a direct proposition for the public administration, to redress the expenses spent in reparations to the victims of human rights abuses, to the public agents who were responsible for them.²⁹⁹ That means that the authors of the violations should replace the National Treasure for the expenses of reparations,³⁰⁰ since the Brazilian State had promoted an extensive program of reparations to the victims, on the terms of Law nº 9.140/95 and 10.559/02³⁰¹. The CNV enforced the need to establish these actions of redress, but so far none of these actions were brought to justice.

This recommendation shows a cosmetic approach to the problem of accountability of these past human rights abuses, especially due to the fact that these regressive actions would overload the public prosecution office. Furthermore, so far (2018) there were no redress actions filled in Brazil's legal system.³⁰²

5.1.7.2 - Institutional Reforms;

Most of the CNV's recommendations are related to Institutional reforms, proving its compromise with the guarantees of non-repetition. These recommendations are aimed to different public bodies and government branches, showing the need to reform Brazil's public administration. And though most of these recommendations were not yet implemented (2018), they are positive initiatives to holistically improve Brazil's administration- along with its positioning on human rights politics and the guarantees of non-repetition -, especially concerning the military

²⁹⁹ Recommendation Number 3, BRASIL; VERDADE, Comissão Nacional da, 2014a, p. 967.

³⁰⁰ Enlighten by the constitutional norm, the Brazilian have the right to receive reparations by the State, if they suffer from any act provoked by a state agent. And it is the duty of the state to redress the expenses of the reparation in face of the public agent who caused the harm. (Federal Constitution of Brazil, Art. 37, §6º), Constituição da República Federativa do Brasil de 1988, 1988.

³⁰¹ TORELLY, Marcelo Dalmas – Justiça transicional e estado constitucional de direito: Perspectiva teórico-comparativa e análise do caso brasileiro, 2010.

³⁰² WESTHROP, A. J.; GUERNICHARO, L. P.; SIMI, G, 2015, p. 230.

branches of the government, that still perpetuate a legacy from the dictatorship.³⁰³

Below, some of the recommendations are separated according to the public bodies or government branches that they are aimed to reform:

- a) Armed Forces: there is a need to restructure the public procurements, as well as the continuous evaluation of its members³⁰⁴ and the curriculum of the military academies³⁰⁵, in order to promote and value the protection of democracy and human rights.
- b) Police Forces: the demilitarisation of the police, culminating in the extinction of the military police³⁰⁶, that still perpetuates a series of human rights abuses as they apply the military culture while handling the civilians.³⁰⁷ The CNV also recommended changes in the public procurements of the police forces, as well as the continuous evaluation programs and the curriculum of the military academies.
- c) Public bodies of forensic expertise: the untying from the legal medical institutes, and from the forensic bodies of the public security offices and the police.³⁰⁸ The public bodies of forensic expertise in Brazil are directly influenced by the police forces and the bodies of public security. Therefore, they maintain a strong influence on the production of evidences. This measure is an important step towards achieving an unbiased and independent work of forensic expertise.³⁰⁹
- d) Prison system: the creation of an ombudsman agency to manage the public relations³¹⁰, as well as the creation of community councils around the country to do a follow-up of these establishments³¹¹, the abolition of

³⁰³ AMNESTY INTERNATIONAL, 2001.

³⁰⁴ Recommendation Number 5, BRASIL; VERDADE, Comissão Nacional da, 2014a, p. 967.

³⁰⁵ Recommendation Number 6, BRASIL; VERDADE, Comissão Nacional da, 2014a, p. 967.

³⁰⁶ Recommendation Number 20, BRASIL; VERDADE, Comissão Nacional da, 2014a, p. 971.

³⁰⁷ See more about this human rights abuses of the military forces in AMNESTY INTERNATIONAL, 2001.

³⁰⁸ Recommendation Number 10, VERDADE, Comissão Nacional da, 2014a, p. 968.

³⁰⁹ WEICHERT, M. A., 2014, p.109.

³¹⁰ Recommendation Number 13, BRASIL; VERDADE, Comissão Nacional da, 2014a, p. 969.

³¹¹ Recommendation Number 14, BRASIL; VERDADE, Comissão Nacional da, 2014a, p. 970.

vexatious searches of visitors, and the prohibition of privatisation of these services.³¹²

- e) Public bodies of promotion and protection of human rights, and prevention of torture: the creation of mechanisms and committees to prevent and fight against torture in all federal states.³¹³ Furthermore, the strengthening of the Public Defender's office, giving more assistance to prisoners in jails, and inside the prison system, in order to guarantee the protection and promotion of human rights, while also developing the ones that already exists, such as the CEMDP, and the Conselho Nacional de Direitos Humanos (CNDH) [National Council of Human Rights].³¹⁴
- f) Judiciary Branch: the extinction of the military justice in the federal states, as a result of the demilitarisation,³¹⁵ and the removal of civilians from the federal military jurisdiction.
- g) Legislative Branch: the revocation of the law of national security, substituting it for a legislation to defend the democratic state.³¹⁶ The typification of the crimes against humanity and the crime of enforced disappearances.³¹⁷ To change the laws that evoke prejudice against homosexuals in the military penal code, such as art. 235³¹⁸, that criminalises libidinous acts of homosexuality in military facilities.³¹⁹ Vetting the justification of deaths in the police operations as “acts of prison resistance”, or “resistance followed by death”, which are common justifications used in police reports.³²⁰ To include a custody audience to guarantee the presentation of the prisoner before a judge

³¹² Recommendation Number 12, BRASIL; VERDADE, Comissão Nacional da, 2014a, p. 969.

³¹³ Recommendation Number 9, BRASIL; VERDADE, Comissão Nacional da, 2014a, p. 968.

³¹⁴ Recommendation Number 17, BRASIL; VERDADE, Comissão Nacional da, 2014a, p.970.

³¹⁵ Recommendation Number 21, BRASIL; VERDADE, Comissão Nacional da, 2014a, p. 972.

³¹⁶ Recommendation Number 18, BRASIL; VERDADE, Comissão Nacional da, 2014a, p. 971.

³¹⁷ Recommendation Number 19, BRASIL; VERDADE, Comissão Nacional da, 2014a, p. 971.

³¹⁸ Decreto-lei nº 1.001, de 21 de outubro de 1969. Brasília, 1969.

³¹⁹ Recommendation Number 23, BRASIL; VERDADE, Comissão Nacional da, 2014a, p. 972.

³²⁰ Recommendation Number 24, BRASIL; VERDADE, Comissão Nacional da, 2014a, p. 972.

in twenty-four hours, as states the article 7³²¹, of the inter-american human rights convention.³²²

- h) Education services: the promotion of human rights and democratic values in all levels of education, in public and private educational establishments.³²³

5.1.7.3 - Truth-telling;

To achieve the truth-telling objective, the CNV made two different recommendations. The first one was to establish a permanent body to continue the works started by the commission by monitoring and implementing the recommendations, and supporting the actions to apply the reparations, preserve the memory of the victims, sensitise and educate about the massive human rights violations.³²⁴ The second aimed to strengthen the politics of transparency and access to information about the human rights violations, and to facilitate the access to the military and civilian archives.³²⁵

Starting a public body to carry out the works of the CNV shows a concern on establishing a legacy, as this can be a way to enforce the findings and the recommendations that resulted from the commissions works.

5.1.7.4 - Reparations to victims;

Five recommendations were traced to achieve new scales of reparations to the victims, and they all correlate with the initial process of reparation that was put in action before the works of the CNV. The first was

³²¹ Inter-American Convention on Human Rights, 1969.

³²² Recommendation Number 25, BRASIL; VERDADE, Comissão Nacional da, 2014a, p. 972.

³²³ Recommendation Number 16, BRASIL; VERDADE, Comissão Nacional da, 2014a, p. 970.

³²⁴ Recommendation Number 26, BRASIL; VERDADE, Comissão Nacional da, 2014a, p. 972.

³²⁵ Recommendation Number 29, BRASIL; VERDADE, Comissão Nacional da, 2014a, p. 975.

the necessity of a public recognition, by the armed forces, of their responsibility towards victims and families.³²⁶ The second was the ratification of the death certificates that were forged as a way of disguising the human rights abuses.³²⁷ The third came as a way to rectify the information on the public security's database where the victims are still targeted as "wanted" or condemned as terrorists based on the legislation of the dictatorship.³²⁸ The fourth is the rehabilitation of the victims, guaranteeing permanent medical and psychological treatment.³²⁹ The last recommendation is to continue the activities that started to locate, identify, and deliver the mortal remains to the families, as some are still missing.³³⁰

These forms of reparations, that were successfully achieved by the CNV, showed that its commitment with dealing with the victims wasn't just a pecuniary compensation. It takes into account the severity of harm that was inflicted, in order to achieve both symbolic and material reparations.³³¹

5.1.7.5 - Preservation and promotion of memory;

Regarding the preservation and promotion of memory, two recommendations are correlate with symbolic reparations³³². The first is a series of actions, like the prohibition of any official events that celebrates the military coup of 1964, the creation of memory marks in buildings where human rights abuses occurred, the creation of an institution and museum in Brasília, called *Museu da Memória* [Musuem of Memory], and the nullification of any honours given to public agents, militaries or civilians associated with the massive human rights violations – like the *Medalha do*

³²⁶ Recommendation Number 1, BRASIL; VERDADE, Comissão Nacional da, 2014a, p. 964.

³²⁷ Recommendation Number 7, BRASIL; VERDADE, Comissão Nacional da, 2014a, p. 968.

³²⁸ Recommendation Number 8, BRASIL; VERDADE, Comissão Nacional da, 2014a, p. 968.

³²⁹ Recommendation Number 15, BRASIL; VERDADE, Comissão Nacional da, 2014a, p. 970.

³³⁰ Recommendation Number 27, BRASIL; VERDADE, Comissão Nacional da, 2014a, p. 974.

³³¹ See more about symbolic and material reparations in: BLOOMFIELD, D.; BARNES, T.; HUYSE, L, 2003, p.145-161.

³³² Recommendations Number 4 and 28, BRASIL; VERDADE, Comissão Nacional da, 2014a, p. 967 and 974.

Pacificador [Peacemaker's Medal]. The second recommendation is the alteration of all the names of schools, streets, buildings and institutions of any nature, public or private, that notoriously have any clear allusion to the human rights abuses, the dictatorship or its perpetrators.³³³

These were important recommendations, especially due to the fact that the militaries still “celebrated” a series of events to ensure their positive positioning towards the memory of the dictatorship. Therefore, the recommendations above stated are very effective to put an end to the legacy of the militaries that still haunted Brazil's cities, as there were lots of schools, avenues, and monuments created in the dictatorship and named after the military presidents, which gave the idea that they brought progress to the society.

5.2- The process of investigation.

Although most of the armed forces' files from the dictatorship era were destroyed, the CNV did not have to gather information from scratch. Because some significant official archives have been located since 1989, the CNV had access to millions of documents from the *Serviço Nacional de Informações* [National Information Service] after they were sent to the National Archives.³³⁴ However, the commission did not have any powers to request private archives, which that was a failure of the law that established the CNV, difficulting the access to a series of files that could have helped the process of investigation.³³⁵

The CNV principally examined existing accounts and documents, instead of creating public hearings or collecting testimonials and narrations to gather new evidence. Only 1,116 new testimonies were collected,³³⁶

³³³ Recommendation Number 28, BRASIL; VERDADE, Comissão Nacional da, 2014a, p. 974.

³³⁴ SKAAR, E.; GARCIA-GODOS, J.; COLLINS, C., 2016, p. 119.

³³⁵ Lei nº 12.998, 2014.

³³⁶ VERDADE, Comissão Nacional da, 2014a, p. 55.

which was a controversial decision among the survivors and the families of the victims, who hoped for a more accessible public forum to share their narratives, and to be recognised as victims.

Acting independently from the government, the CNV was empowered to compel testimony, to name perpetrators, to subpoena officials (including the militaries), and to recommend public policy reforms. It also had a wide range of competence to investigate crimes from a significant time-frame, as the law covered crimes that happened between 1946 and 1988, although the CNV's members focused their work on the dictatorship, because they decided to only investigate the crimes committed by public agents, and the persons at their disposal, that were supported by or acted with the States own interest.³³⁷ This decision discarded the “two demons theory” – where the crimes committed by the dictatorship dissidents against the state, its agents and other civilians should be investigated – since these armed resistance acts against the military regime were denominated) as terrorist acts and used as a justification to the severe repression of the State.³³⁸

The decision to only investigate the crimes committed by the ones linked to the State is based on the idea that the State is responsible for every human rights violations that happened within its territory (even if committed by non-state actors). This derives from the idea that States are subjects of the international law with direct rights and responsibilities³³⁹. Also, there are two commonly sustained theories about the responsibility on human rights violations. The first assumes that the state is the only one responsible for the protection of human rights, and so, it's the only one who can violate them (classical theory). The second says that non-State actors can be held accountable for human rights violations, as long as they have

³³⁷ Our translation: “Article 1: To the National Truth Commission it is only attributed the re-examination and clarification of the serious human rights violations practiced in the time-frame fixated in Article 8 of the Act of the Transitory Constitutional Provisions, by public agents, persons at their disposal, with the support or at the States own interest.” Resolução Nº 2, de 20 de Agosto de 2012, 2012.

³³⁸ WEICHERT, M. A. 2014, p.92.

³³⁹ MCCORQUODALE, Robert – The individual and the international legal system, 2003, p. 301.

government-like functions, or if they have a significant relation of power or social superiority.³⁴⁰ This is possible due to the global changes that have facilitated the growth of powers on the part of non-State actors.

What these two theories have in common is the reasoning that the human rights violations presuppose the unevenness of power between the perpetrator and the victims, situation, which is commonly present in relations with the state, and eventually, between civilians. Therefore, the human rights violations could only be perpetrated by the State, or non-State actors that are in a clear position of superiority³⁴¹ which means that the civilians cannot be classified as perpetrators of serious human rights violations in acts of resistance against the State, even with the use of violence. But that does not mean that rebels and intern insurgents cannot commit serious human rights violations, because when these groups dominate a territory or are transformed into structured organisations, they achieve the role of perpetrators, as belligerent forces.³⁴²

In Brazil's military regime, the armed organisations that fought against the dictatorship were rather weak and were not able to organise themselves in order to achieve a territorial control or domain over the will of others. Therefore, they could not be characterised as a non-State actor with belligerent force, and so their acts of violence, (even when against civilians), could not be characterised as human rights violations, although they could be classified as political or common crimes.³⁴³ This not only justifies the aim of the CNV to investigate human rights violations committed only by the State, its agents, and the ones linked to its will, but also explains why they did not focus their efforts on investigating and demystifying the official statement of a "war against terrorism" from the militaries.

³⁴⁰ GRANT, Ruth W.; KEOHANE, Robert O – Accountability and abuses of power in world politics, 2005, p. 35.

³⁴¹ WEICHERT, M. A., 2014, p.130.

³⁴² CASSESE, Antonio – International Law, 2005, p. 125.

³⁴³ WEICHERT, M. A., p.93.

Even though this absence of a characterised war was mentioned in the reports of the commission, the lack of an official statement that could end this “myth of terrorism” felt like a neglect from the CNV on the collective memory of victims, and their families, that still carry this terrorist stigma.

5.2.1- The role of victims and perpetrators on the process of investigation

On the road to prevent recurrences of past atrocities, as well as to cleanse the corrosive effects of injuries left by the massive human rights abuses of the past, societies must understand the facts that led to these events. But in order to come fully to terms with its brutal past, they must uncover, precisely, who did what to whom, under whose orders and why.³⁴⁴ Achieving these answers is only possible with the collaboration of both sides, to trace memories and handle these past events. Since the truth commission's reports are addressed to the general public, their participation in its creation is crucial as a form to unveil the truth, and give voice to those who have something to contribute.³⁴⁵

The analysis on how the CNV handled victims and perpetrators of the military regime to produce its report is essential to criticise and study its impact, since the aim of a truth commission is to establish an impartial and honest account of past events, as a way to reconstruct historical memory where the conventional state institutions have failed to do so.³⁴⁶ Truth commission's members have to insert themselves as mediators between the victims and perpetrators, the society and the state, as a way to re-write such a historical backdrop.³⁴⁷ Because of that the CNV commissioners had to bridge the emotional and informational gap in order

³⁴⁴ ROTBERG, R. I.; THOMPSON, D., 2000, p.3.

³⁴⁵ BAKINER, O., 2015, p.59.

³⁴⁶ BAKINER, O., 2015, p.53.

³⁴⁷ BAKINER, O., 2015, p.59.

to trace this historical memory. But were their efforts good enough to achieve this need?

5.2.1.1- Society and victims participation.

The law 12.528 created the CNV and established that the commission could promote public hearings aimed to collect the narratives of victims and witnesses, as well as the testimonials of agents of the repression.³⁴⁸ During its mandate, the CNV organised 80 public hearings, collecting 565 testimonies from 14 states. As of February 2014, the public hearings started to present partial reports of the commission, that were broadcasted live and happened periodically.³⁴⁹

The CNV was formed by six members who were nominated by President Dilma Rousseff. This arbitrary nomination excluded society's participation in the process and delegitimised people that represented the victims and wanted to participate actively in the process of investigation.³⁵⁰ This situation encouraged the creation of non-official truth commissions around the country, as most victims still wanted to actively contribute with the CNV's work. This was not possible, since their only channel was through an ombudsman agency, which raised criticism about the lack of participatory mechanisms in the operations.³⁵¹

The commission decided to prioritise its efforts on the elaboration of a substantial report, mainly based on the analysis of documents. This approach was adopted in detriment of the possibility of having a wide political debate in society, discussing human rights violations and

³⁴⁸ Lei nº 12.528, 2011.

³⁴⁹ BRAZIL; CNV. 2014a, p. 54,

³⁵⁰ There is an official positioning of the group 'Tortura Nunca mais', that represents the families and victims of the military dictatorship and can be found in: <<http://www.torturanuncamais-rj.org.br/a-comissao-da-verdade-e-o-sigilo-da-ditadura/>>. Accessed 30 April 2018.

³⁵¹ SKAAR, E.; GARCIA-GODOS, J.; COLLINS, C., 2016, p. 118-119.

authoritarianism, as well as the roots of Brazil's democracy and what needed to change in order to proceed towards a brighter future.

Even so, the contribution of the general public was quite significant, as, according to the statistic report, the ombudsman agency received 1.984 communications, divided into requests of information, complaints, suggestions, compliments, information inputs and denounces. It also received 399 suggestions and recommendations, in which 307 were pertinent to the commission's institutional mission.³⁵²

The CNV also worked together with the Amnesty Commission to use its caravans, reaching different parts of the country with cultural seminars, public hearings, and the adjudication of applications for amnesty. This project had been implemented by the Amnesty commission since 2008, and as of June 2014, 86 caravans had been organised.³⁵³

5.2.1.2- The perpetrators and their role on the investigatory process.

The law gave the CNV powers to subpoena those who may have relevant information to clarify facts and circumstances of the investigation process.³⁵⁴ This provision could have served as an important tool to collect information from agents of the repression, as they did not voluntarily contribute with their testimonials. But the CNV emphasises the lack of collaboration from the military forces, as there was clear attrition between the militaries and the works of the commission.³⁵⁵

Despite the legal provisions, the Armed forces refused to comply with the law and provide evidence on the location of the bodies of the disappeared, refusing to cooperate with the process of investigation and consistently failing to provide the missing pieces of information that were needed to locate and clarifying the circumstances of death of many

³⁵² WESTHROP, A. J.; GUERNICHARO, L. P.; SIMI, G. 2015, p. 108.

³⁵³ SKAAR, E.; GARCIA-GODOS, J.; COLLINS, C., 2016, p. 115.

³⁵⁴ BRAZIL. Lei nº 12.528, 2011.

³⁵⁵ BRAZIL; CNV, 2014a, p. 64.

victims.³⁵⁶ As the CNV commissioner Pedro Dallari repeatedly stated, the armed forces constantly responded to the CNV's requests, but they always provided superficial and sometimes contradictory or false information³⁵⁷

This lack of collaboration, along with the failure to delivery documents (according to the report only a quarter of the eighty-four official letters that were sent had a response, though only a minimum part of these responses really contributed to the investigations)³⁵⁸, prove the discontentment of the Armed forces towards the investigation process. Therefore, the CNV stated on its report that if the Armed Forces collaborated with the investigation, handling the documents produced during the dictatorship, the historical truth about the executions, torture and concealment of bodies from the political oppositions could have been better elucidated. That means that the work would be more fruitful.³⁵⁹

The biggest problem caused by the lack of collaboration from the Armed Forces came as the CNV solicited the military commands to establish investigations in order to clarify the misuse of different military facilities to practice torture and other serious human rights violations. One of them was the DOI-CODI (OBAN) from São Paulo, where the President Dilma Rousseff was detained and tortured.³⁶⁰ But the military commanders of the navy, the army and the air force stated that the investigations were concluded as there were not any misuses of the military facilities.³⁶¹

This was a surprisingly outrageous response, because it stated that the militaries either considered that torture and other human rights violations were legal and compatible with the purpose of the military installations, or that all the denounces were unfounded, even the ones

³⁵⁶ SCHNEIDER, N. DE ALMEIDA, G. I., 2018, p. 641.

³⁵⁷ Official Speech by Dallari at the Brazilian bar Association (OAB) on 10 December 2014, as cited in SCHNEIDER, N. DE ALMEIDA, G. I., 2018, p. 641.

³⁵⁸ BRASIL; VERDADE, Comissão Nacional da, 2014a, p. 64.

³⁵⁹ BRASIL; VERDADE, Comissão Nacional da, 2014c, p. 35-36.

³⁶⁰ These informations and documents can be found at the Brasil Nunca Mais website, BRASIL: NUNCA MAIS – Brasil Nunca Mais, 2016, see references for access.

³⁶¹ BRASIL; VERDADE, Comissão Nacional da, 2014a, p. 65.

specifically aimed at the DOI-CODI/OBAN in São Paulo (which the President Dilma Rousseff admitted in her testimony). In the first case, they could be assuming that the facilities had these practices of human rights abuses as a coherent routine of the activities in the military facilities. As of the second situation, they would be actually declaring that the President Dilma Rousseff, and many other victims, were lacking with the truth in their depositions and narratives.

It's clear that there was not a good relation between the works of the CNV and the militaries, and that generated a lack of contribution from the "other side" in the factual and historical truth of the report. Even so, the CNV created a list naming the (allegedly) authors of the human rights violations.³⁶² Evidently, due to the absence of persecutory capacity, caused by the effects of the amnesty law, the commission was not able to hold them accountable for their crimes against humanity.

According to the report, the CNV was extremely cautious while creating this list, always looking towards substantial proof, depositions and testimonies of victims, and even other agents of the repression.³⁶³ The CNV also stated that they tried to collect the testimony of those accused of being the perpetrators of the abuses, but they did not achieve success, as most of them decided not to attend the hearings or chose to remain silent in their depositions.³⁶⁴

The CNV named only 377 perpetrators. This happened as a result of the commission's decision to name only the ones with irrefutable evidences of their crimes and the ones whose crimes were related to cases of death (most of them as a result of torture), disappearances or "emblematic cases" of torture and other violences that are mentioned in the report. Therefore, the Commission did not enlist the ones responsible for unlawful arrests and cases of torture that did not result in death.³⁶⁵ A Brazilian historian called

³⁶² BR BRASIL; VERDADE, Comissão Nacional da, 2014a, p. 841-932,

³⁶³ BRASIL; VERDADE, Comissão Nacional da, 2014a, p. 843.

³⁶⁴ BRASIL; VERDADE, Comissão Nacional da, 2014, p. 843.

³⁶⁵ Recommendation Number 25, BRASIL; VERDADE, Comissão Nacional da. 2014a, p. 873-931.

Carlos Fico repeatedly criticised the position of the CNV on focusing most on high-profile cases, as they lost an opportunity to wider the impact of the dictatorship on the lives of ordinary citizens.³⁶⁶ The number of citizens who were tortured, illegally imprisoned or raped is not estimated in this report,³⁶⁷ and, according to Carlos Fico, this information could have served to demystify the idea that the repression only affected those who were against the system and a part of the so called “terrorist groups”.

Most surviving victims welcomed this list of names, especially because it included the chain of command and was the first official acknowledgement of systematic state violence. However, many local truth commissions and victims’ organizations such as the *Tortura Nunca Mais* called this estimative too conservative and complained about the names of proven torturers that had been omitted from the final report.³⁶⁸

Even though the list had mixed opinions, it was a fundamental step to reach the truth about the human rights violations of the past, as it was hailed by José Henríquez, a member of the Inter-American Commission on Human Rights (IACHR), who praised the work of the commission.³⁶⁹

The commission enlisted the perpetrators into three different categories. The first is the political-institutional, that includes the ones who permitted the serious human rights violations, and contributed to the establishment of strategies that permitted them to be institutionalised.³⁷⁰ This list is composed by the five presidents of the Republic during the military rule, and the three members of the military junta, as well as forty five members of the military high court of command.³⁷¹ They were classified in this category, using a criteria of objective responsibility, because they

³⁶⁶ MARTINS, R. – Especialistas criticam foco excessivo da CNV em casos j. sabidos, 2014.

³⁶⁷ SCHNEIDER, N. DE ALMEIDA, G. I., 2018. p. 643.

³⁶⁸ SCHNEIDER, N. DE ALMEIDA, G. I., 2018. p. 646.

³⁶⁹ SCHNEIDER, N. DE ALMEIDA, G. I., 2018. p. 646.

³⁷⁰ BRASIL; VERDADE, Comissão Nacional da, 2014a, p. 844.

³⁷¹ Recommendation Number 27, BRASIL; VERDADE, Comissão Nacional da, 2014a, p. 974.

held positions of power, and were key decision makers during the military dictatorship.

The second group presents the names of those responsible for the control and administration of structures and proceedings linked to the massive human rights abuses.³⁷² They were also classified using objective responsibility criteria, where the CNV identified eighty-three agents, and in most cases, the facts that occurred in the unities that were under their command.³⁷³

The third category has the direct perpetrators of acts of violence and crimes against humanity. It is a list of two hundred and thirty-nine names, whose actions the CNV had concrete evidences.³⁷⁴

This limited number of perpetrators is also a result of the lack of collaboration from the armed forces, who, as previously mentioned in this chapter, insisted on being apart from the investigation process. Even though legal provisions could have enforced the powers of the commission, the tension between the branches of the government and the work of the commission made the commissioners set the militaries aside.

5.3- The CNV's proceedings and their importance in tracing its effectiveness to deal with the past.

To achieve a good positioning about the effectiveness of the CNV's work, it is important to know the steps that led to the creation of the final report. Being aware of the objectives traced in its creation, as well as the powers and the mandate that were set to achieve them, it's possible to see that, even though the truth commission had an ambitious project to pursue, they were unable to achieve it completely due to a series of facts that were discussed. The limited amount of time to work (only two years), the wide

³⁷² Recommendation Number 25, BRASIL; VERDADE, Comissão Nacional da, p. 843-855.

³⁷³ Recommendation Number 25, BRASIL; VERDADE, Comissão Nacional da, p. 855-873.

³⁷⁴ Recommendation Number 25, BRASIL; VERDADE, Comissão Nacional da, p. 873.

time scope (even though it was narrowed soon after its creation),³⁷⁵ the limited human resources, and the lack of a time period to structure and define its modus operandi were just the beginning of a series of facts that got in the way of the commission's work.

As for the investigation process, the lack of collaboration from the Armed Forces just proved the discontentment of the militaries, as well as a tension between the branches of the government.

Knowing that commissions serve as mediators between political decision makers and vulnerable sectors of the population (victims in particular), regulating disagreements over the violent past, it's possible to identify that the objectives of the CNV were rested on the actual capabilities of mediation on these relations of power. But was Brazil's CNV able to do so?

To mobilise both society and state actors in order to achieve a common truth, the CNV implemented a series of participation mechanisms, through social media, their official website, live broadcastings, an ombudsman agency and, mostly, the creation of local commissions. These measures were important to get close to the public in a continental country like Brazil. But were they really successful?

Sectors of the society still criticised the lack of participation and transparency on the CNV's proceedings,³⁷⁶ more so as some of the local commissions were not even acknowledge by the CNV.³⁷⁷ It seems that the limited amount of time was a big problem to handle both the public and the creation of local commissions, especially when some of these initiatives kept working even after the end of the CNV.³⁷⁸

Going through its final report, it is possible to identify a few problems on achieving the public awareness on its findings. Since it consisted on a

³⁷⁵ SCHNEIDER, N. DE ALMEIDA, G. I., 2018. p. 640.

³⁷⁶ SKAAR, E.; GARCIA-GODOS, J.; COLLINS, C., 2016, p. 119

³⁷⁷ **As mentioned before, some of the commissions started their works after the CNV publication of its final report, and worked on their own timeline. See note 32.**

³⁷⁸ WESTHROP, A. J.; GUERNICHARO, L. P.; SIMI, G., 2015, p. 35 and 96.

3.383 pages report divided into three volumes, with no index support, and written with several legal jargons and technicalities, it's clear that it was not written with a mass audience in mind. Furthermore, the lack of references to academic historiography in the Final Report suggests that the CNV did not research deeply into the subject matter, a fact that can be justified due to the lack of human resources and the limited amount of time to do the investigation.³⁷⁹

When we get a closer look to other commissions in Latin America, seeing how they approached the publication of its final reports, it is obvious that the CNV fell short on achieving public awareness of its findings. The Argentine *Comisión Nacional sobre Desaparición de Personas* (CONADEP), for example, produced a final report published in book format that became a bestseller.³⁸⁰ Another example is the Sierra Leonean Commission (2004), that developed a version of its final report for schools, and the Canadian truth and Reconciliation Commission, that offered a reader-friendly Executive Summary.³⁸¹

Truth Commissions are a result of society's need to deal with its darkest past, making this lack of commitment to adapt the findings to a wider audience a crucial failure. The situation deepens since there is a clear audience for information on the dictatorship, which is proved with the best-selling numbers of *Brasil: Nunca Mais*, as well as the extensive coverage of the media on the commission's key findings, as some of them even got headline news on the most important daily newspapers.³⁸²

The importance of the public awareness is evident when one of the most significant indicators of a commission's impact is its ability to generate

³⁷⁹ SCHNEIDER, N. DE ALMEIDA, G. I., 2018. p. 645.

³⁸⁰ For more information on the publication see: CONADEP – *Nunca Más: Informe de la Comisión Nacional sobre la desaparición de personas*, 1984.

³⁸¹ SCHNEIDER, N. DE ALMEIDA, G. I., 2018. p. 646.

³⁸² To find more information on the media coverage of the CNV, most specifically by the biggest journals in Brazil, the "Folha de São Paulo" and "O Estado de São Paulo". There is an article that makes some notes about the press covering of the final report in DE MELLO, Felipe Corrêa; BACCEGA, Maria Aparecida – *Imprensa e discurso histórico: a Comissão Nacional da Verdade na Folha de São Paulo e no Estado de São Paulo*, 2015.

public debate. Therefore, the limited circulation of the final report and the lack of accessibility to the general public³⁸³ are two key factors on the CNV's failure. However, the actual impact of a truth commission and its effectiveness on dealing with the past rest on an array of causal effects. And so, what are the actual parameters used to identify a truth commission's impact? Were they successfully achieved by the CNV?

The analysis of the proceedings contemplated in this chapter created the basis to answer these questions and to identify the actual effects of the CNV, after the publication of its final report. Keeping in mind that the 29 recommendations can only exert some difference if they are actually implemented and incorporated into policy³⁸⁴, are there other factors that can define a truth commissions' effectiveness on dealing with the past?

It is clear that the extensive work of the CNV resulted on great repercussion that moved society, the public administration and the armed forces. The commission's work created tension between these sectors of the state and generated public debate, as the controversies and conflicts started even before the announcement of its activities, followed its proceedings and arose after the publication of its report.

Taking into account all the factors exposed in this chapter, it is possible to move towards an evaluation of the actual effectiveness of the CNV on dealing with the past?

³⁸³ SCHNEIDER, N. DE ALMEIDA, G. I., 2018. p. 646.

³⁸⁴ BAKINER, O., 2015, p.95.

6 – The CNV's Impact.

In previous chapters, we went through the evolution of transitional justice, explaining its phases and how it changed from a response to conflict – where the international community sought justification for intervention and criminal sanctions on a National level³⁸⁵ – to an integrated part of good governance, human rights and peace building programmes³⁸⁶, setting a diverse array of tools to be used as a political response to human rights violations.

The importance of studying the evolution of transitional justice was to set the basis for narrowing this research to focus on the historical development of truth commissions. These commissions are one of the most important tools in dealing with past human rights abuses, since they are independent and temporary bodies, established with an official mandate in order to investigate and identify patterns and causes of violence, aiming to publish a final report with recommendations to push society to achieve the healing process and the guarantees of non-repetition.³⁸⁷

With this solid theoretical basis of transitional justice and truth commissions, another step towards answering the question on the effectiveness of Brazil's CNV was to trace the historical, political and socio-economic situation that led to the need of applying this transitional justice tool. In chapter 3, we answered why the CNV was needed, and studied the motives that led to the 32 years of silence that led into the establishment of it as a non-transitional commission.

Next, we went through an analysis of the CNV's proceedings, with its positive and negative aspects, as a way to finally achieve a deep understanding on the facts that can set its impact. This led towards

³⁸⁵ LUBAN, D., 1994, p. 336.

³⁸⁶ DUTHIE, R., 2008, p. 292-309.

³⁸⁷ OLSEN, T. D., PAYNE, L. A., REITER, A. G., 2011.

answering the main question of this research: was Brazilian truth and reconciliation commission an effective tool in dealing with the past? To answer it, we now need to trace the impact of the commission, setting its causal references and the positive and negative aspects to underlies the CNV's effectiveness.

The truth commission's impacts are a causal reference to the effects of its process on society, the state and its representatives. To trace this impact, it is necessary to collect evidence of changes in policies and judicial procedures after the works of a truth commission, as a way to detect its influence on institutions' and individuals' interests, decisions, values, and beliefs.³⁸⁸

This chapter starts with the parameters used in order to evaluate the impact of the CNV, with direct references to mechanisms brought after the works of the commission and directly influenced by it. This is followed by a critical analysis of these mechanisms and their impact, as a way to finally answer the main question of this research: was Brazil's truth commission an effective tool on dealing with the past?

A truth commission's impact rests on its effect on government judicial procedures; politics; social norms; process of investigation; and other causal effects. However, studying its works is not an exact science – specially as qualitative and quantitative research strategies produce different results in human rights research³⁸⁹ –, showing the need to outline the basis of this analysis as a way to answer the question on the effectiveness of the CNV.

6.1- The Parameters to establish the analysis;

³⁸⁸ BAKINER, O., 2016, p.93.

³⁸⁹ BAKINER, O., 2016, p.92.

To evaluate the works of the CNV, it is important to establish a set of parameters to follow. These parameters were created based on the works of Onur Bakiner³⁹⁰, Priscilla B. Hayner³⁹¹, Margaret Popkin and Naomi Roht-Arriaza³⁹², who produced a list of several causal mechanisms to evaluate the commissions' capacity to create changes in judicial practices, social norms and policy. Their concrete definition, as well as the importance of the evaluation of the CNV's work, will be outlined in this chapter. After that, the work of the CNV itself will be approached, along with the impacts that it produced through these mechanisms. Examples highlighted in previous chapters, added to a critical approach on their positive and negative aspects, will also be brought back in this chapter, in order to build new aspects that will set the conclusion of this research.

6.2- Direct Political impact.

The direct political impact of a truth commission is shown through the incorporation of its recommendations and findings into politics.³⁹³ It depends crucially on the willingness of political decision makers to implement those suggestions, as well as publicly acknowledge the existence of human rights violations in order to promote the institutional reform³⁹⁴ that would lead to progress in human rights conduct and democratic governance.

The recommendations produced by a truth commission are always context-based and need specific implementations according to the country that they are produced. But it is possible to trace some key factors that indicate the direct political impact of a truth commission, as there is a near-

³⁹⁰ BAKINER, O., 2016, p.87-113.

³⁹¹ HAYNER, P. B., 1994.

³⁹² POPKIN, Margaret; ROHT-ARRIAZA, Naomi. Truth as justice: Investigatory commissions in Latin America. Law & social inquiry, 1995, p. 79-116.

³⁹³ BAKINER, O., 2016, p.95.

³⁹⁴ BAKINER, O., 2014, p.7.

universal demand for certain political attitudes and changes in politics.³⁹⁵ The main indicators are: (1) public recognition and acknowledgment from a government leader of the commission's findings ; (2) the publication of the commission's final report by the government; (3) the actual implementation of a reparation program; (4) the establishment of institutions to carry out the recommendations and to monitor its progress.³⁹⁶

These indicators are used as a way to capture the changes in policies that are directly linked to the truth commission's recommendations. Because some human rights policies can be established, but not necessarily abide to the truth commission's final report, they are crucial to analyse its direct political impact.

6.2.1 - The Direct Political impact of the CNV.

The CNV's direct political impact has a controversial achievement. Even though there was public recognition of the massive human rights abuses,³⁹⁷ both by the State and Brazil's former president³⁹⁸, the other indicators have a strong negative response in its significance.

For instance, the actual implementation of reparations programmes³⁹⁹ is not a direct result of the CNV's work, but a consequence of the efforts of the Amnesty Commission and the CEMDP. As it was mentioned before, these institutions⁴⁰⁰ have been working on reparations for years before the CNV. Therefore, the commission's causal effect on these programmes cannot be traced as a positive factuality of its effectiveness. It's important to mention, however, that the public

³⁹⁵ BAKINER, O., 2016, p.98.

³⁹⁶ BAKINER, O., 2014, p. 20.

³⁹⁷ See topic 5.1.5.

³⁹⁸ To see the former president publicly recognising the final report, see BRASIL - Dilma recebe relatório final da Comissão Nacional da, 2014 on references.

³⁹⁹ So, as of 2014 Brazil's government spent 3.6 billion reais in reparations see more in: ÉBOLI, Evandro – O custo da reparação: indenizações aprovadas na Comissão de Anistia chegam a R\$ 3,4 bilhões, 2014.

⁴⁰⁰ See topic 4.2.

acknowledgment of the CNV's final report, along with its enforcement as an official document, can lead to its usage at the judiciary branch, as a means to enforce the rights to reparations.⁴⁰¹

Another negative indicator of a direct political impact lies on the fact that, as of 2018, not only an institution to carry out the recommendations and monitor their progress has not been established yet, but the Brazilian State completely failed to respond to most of the recommendations or to comply with them.⁴⁰²

In a deep analysis of the publication of the final report, it is noticeable that its impacts rest on the accessibility to its content, along with its circulation in different sectors of society.⁴⁰³ Therefore, even though the final report of the CNV was officially recognised, published, and is currently available online, it lacks accessibility, which is caused by the use of legal jargons, the extensive form of its contents, the lack of an index guide, and its the limited circulation.⁴⁰⁴ That means that, although the CNV had fulfilled its duty in making the final report available online, its lack of promotion, distribution and public awareness are further negative characteristics of its effectiveness. This proves that the impact of a report doesn't depend on its content, but on the results of its publication.

Due to the fact that there were no tangible changes on the reparations programmes as a result of the CNV's work - added to the lack of accessibility to the final report and the lack of establishment by the Brazilian government of an institution to carry its work - it's possible to conclude that the CNV has a negative direct political impact, failing to achieve this indicator of effectiveness.

⁴⁰¹ See topic 5.1.5.

⁴⁰² SCHNEIDER, N.; DE ALMEIDA, G. I., 2018. p. 646.

⁴⁰³ SCHNEIDER, N.; DE ALMEIDA, G. I., 2018. p. 647.

⁴⁰⁴ See topic 5.3.

6.3 - Indirect Political impact through civil society mobilisation.

The main difference between Direct and indirect political impact is the adoption of human rights initiatives and truth commission recommendations as a result only of society's mobilisation.⁴⁰⁵ The indirect political impact is a result of society's mobilisation around the truth commission's work, especially in its post mandate period. The main indicators of its impact are: (1) non-governmental publications of the final report (if the government fails to do so); and (2) local, national and international activism from NGOs and society's groups to monitor the progress of the process of investigation, the applicability of its recommendations and the effectiveness of the reparation programs.⁴⁰⁶

Society's mobilisation is a key factor for policy changes, as they can use the truth commission's recommendations in order to hold the government accountable and to demand institutional reforms.⁴⁰⁷ Therefore, the truth commissions are a mechanism for international and domestic human rights groups to make demands on political changes, as well as evaluate progress on human rights policies.⁴⁰⁸ When society utilises of these mechanisms as a result of the commission's work, it emphasises an indirect political impact.

It's important to know, however, that society's mobilisation to pressure the government into creating a truth commission⁴⁰⁹ does not characterise its indirect impact. This actually shows the need to create a truth commission, instead of its effectiveness on dealing with the past.

⁴⁰⁵ BAKINER, O., 2016, p. 99.

⁴⁰⁶ BAKINER, O., 2016, p. 99.

⁴⁰⁷ WIEBELHAUS-BRAHM, Eric – Truth commissions and transitional societies: The impact on human rights and democracy, p.29

⁴⁰⁸ BAKINER, O., 2016, p.101.

⁴⁰⁹ MCEVOY, K.; MCGREGOR, L., 2008.

6.3.1 - Indirect political impact of the CNV.

The indirect political impact of the CNV rests on the local and international activism of the truth commission's work. To trace this impact, we go through the CNV's work, the creation of unofficial truth projects⁴¹⁰, society's mobilisation to organise international and national colloquiums,⁴¹¹ and the existence of local commissions, as most of them came as a society's initiative. It is, therefore, obvious that society attempted to participate in the process of investigation,⁴¹² giving a positive response to the CNV's indirect political impact.

As previously studied, Brazil's society suffered for years in silence, building up the urge to unfold this violent past. The establishment of an official truth commission translated, then, into an opportunity to investigate and get an official recognition of their pain, which made the CNV's indirect political impact, positive.

6.4 - Vetting.

The process of vetting (also known as "lustration") is important to screen out abusive officials, serving as one of the steps needed to achieve the guarantees of non-repetition.⁴¹³ Because of that, several UN entities, like the Office of the UN High Commissioner for Human Rights (OHCHR) and the UN Development Programme (UNDP), released public guidelines recommending the use of vetting on public employees and former officials as a preventive measure.⁴¹⁴

⁴¹⁰ See topic 4.3

⁴¹¹ For more information on the international colloquium about the CNV see MIGOWSKI, Ana – The Brazilian National Truth Commission in the Context of Latin America: Local, National, and Global perspectives on references; For more information on national initiatives and colloquiums see BRASIL: NUNCA MAIS, 2016 on references.

⁴¹² See topic 4.1.2

⁴¹³ MAYER-RIECKH, Alexander – Guarantees of Non-Recurrence: An Approximation, 2017, p. 424-426.

⁴¹⁴ OHCHR – Rule-of-Law-Tools for Post-Conflict States. Vetting: an Operational Framework; UNDP – Vetting Public Employees in Post-Conflict Settings: Operational Guidelines, 2006.

The importance of vetting is clear, as its existence in the truth commission's final report is the first step to achieve a positive response in this parameter. However, the actual causal reference of its application as a result of truth commissions' work is necessary, especially because, despite their efforts around the world, recommendations of vetting/lustration have not produced a significant impact in the broader picture.⁴¹⁵ Since this transitional justice tool is normally used without the presence of a truth commission, working as an independent tool,⁴¹⁶ its existence isn't necessarily linked to the commission. Therefore, since the process of vetting is not a component that only emerges as a result of a truth commissions work, its mere existence is not a sign of the commission's impact, creating the need to set a causal reference of the procedure⁴¹⁷ as a way to identify the impact of the truth commission.

6.4.1- The CNV and the process of Vetting.

Even though there were recommendations for institutional reforms, including the application of a vetting process,⁴¹⁸ as of 2018 many perpetrators of human rights abuses still have position of power in Brazil's public administration, even as political representatives.⁴¹⁹ Consequently, the complete failure of achieving this step is yet another negative response of the CNV's work.

6.5- Delegitimation.

⁴¹⁵ To find more data on truth commissions that recommended vetting/lustration processes and the results, see HAYNER, P. B., 2010, p. 280-284; BAKINER, O., 2015, p. 111.

⁴¹⁶ BAKINER, O., 2015, p.101.

⁴¹⁷ BAKINER, O., 2015, p.101.

⁴¹⁸ SCHNEIDER, N.; DE ALMEIDA, G. I., 2018. p. 646.

⁴¹⁹ STEPAN, A. C., 2015.

Naming names, exposing, shaming and delegitimizing perpetrators, even if there is no official plea for a vetting process, is also an effective way to improve human rights conduct.⁴²⁰ Commissions often point out the institutions and individuals that were responsible for human rights violations, but, unlike vetting, this causal mechanism depends on the media and society's support to be achieved.⁴²¹

It is difficult to put some quantitative criteria on the delegitimation process, as its effects depend on society's reactions to the individuals and institutions that are denounced by the truth-commission.⁴²² Furthermore, those actors have a tendency to engage in extra-legal activities, actively plotting against the works of the commission, in order to discredit it, as a way to defend their power and reputation, which creates a risk to democratic stability and the rule of law.⁴²³

Taking these factors into consideration, this analysis identifies the impact of this criteria through a causal reference towards the existence of truth-finding efforts. The presence of a list of names, or even a detailed report on the systematic and institutional nature of the human rights violations, as well as the efforts to facilitate the access to these information to the general public, characterise the delegitimization impact in the commission's work, since⁴²⁴ it enables society to naturally create a delegitimizing effect on those responsible for the human rights abuses.

6.5.1- The delegitimizing effect of the CNV.

This topic shows the complete inaccessibility of the CNV, and the need raise public awareness on a society's past. Years after the publishing of the final report, the events that led into the impeachment of Brazil's

⁴²⁰ BAKINER, O., 2016, p.101.

⁴²¹ BLOOMFIELD, D.; BARNES, T.; HUYSE, L., 2003, p.126-127.

⁴²² BAKINER, O., 2015, p.101.

⁴²³ WIEBELHAUS-BRAHM, E. Routledge, 2010, p.13.

⁴²⁴ BAKINER, O., 2015, p.101.

former president Dilma Rousseff⁴²⁵ are strongly supported by movements pro-dictatorship. People are claiming for the return of a military intervention and political figures are publicly supporting perpetrators of human rights abuses.⁴²⁶ These facts show that the CNV completely failed to achieve the delegitimising effect, and even though this is a process that takes time to be achieved, its actual positive response is unlikely.

6.6- Reconciliation through consensus

The participation of victims and their relatives on the process of investigation show a way to rewrite the official history and achieve reconciliation and explain why many investigatory bodies are called “truth and reconciliation commissions”.⁴²⁷

Handling the victims is an important part of the truth commissions work, as one of its main goals concerns redress and reconciliation. But, since forgiveness is only achieved through the knowledge of what is to be forgiven,⁴²⁸ the importance of truth-telling, as well as creating a platform for victims to overcome ostracism, isolation and anger, are key factors of defining the commissions' effectiveness.⁴²⁹ The main factors to establish the effective reconciliation through consensus are: (1) the accessibility and transparency during the process of investigation, having platforms for both perpetrators and victims to engage on it; (2) the provision of reparations, compensations, public acknowledgment and commemorative efforts to

⁴²⁵ DE OLIVEIRA, Hebe Maria Gonçalves – Retrato das manifestações de rua no processo de impeachment da presidenta Dilma Rousseff: a construção da opinião pública pela mídia privada brasileira, 2016, p. 83-96.

⁴²⁶ One of Brazil's congressman's, Jair Bolsonaro publicly praised one of Dilma Rousseff's torturers, the colonel Alberto Brilhante Ustra during his vote in her impeachment process. To see the video, look for GUTO - Voto de Jair Bolsonaro a favor do impeachment, 2016 on references.

⁴²⁷ BAKINER, O., 2016, p.104

⁴²⁸ POPKIN, M.; ROHT-ARRIAZA, N., 1995, p. 99.

⁴²⁹ MAYER-RIECKH, Alexander – Justice as prevention: vetting public employees in transitional societies, 2007, p.186.

victims, their families and the community; (3) the participation of civil-society initiatives.⁴³⁰

Tracing reparations, compensations and commemorative efforts are a consequential causal effect, as the efficacy of these transitional justice tools are a consequence to the participation of the victims into the proceedings. Because its repercussion is another important factor to establish its effectiveness,⁴³¹ to achieve an effective redress to the victims their needs, urges and expectations have to be taken into consideration, and the best way to implement this is through the participation of the ones that are directly interested in this process.

Providing a platform to share stories, collect data, and incorporate a large group of victims as an active part of the process of investigation - instead of just a spectator's reaction to a finished product -⁴³² shows the importance of their stories to the commission. On the other hand, the active participation of civil-society initiatives during the process of investigation reveals the public's commotion and acceptance of its work.⁴³³

However, even though the commission provides a factual base, the role to build politics of forgiveness and recognition should be evaluated as a long-term political and normative transformation. That requires the guilty to acknowledge their responsibility for the past abuses and to commit themselves to new standards of behaviour in the future, rather than an immediate reconciliation effort based only on the platforms of truth-telling.⁴³⁴ Therefore, this causal explanation rests on the direct impact of the relations of victims, their relatives and perpetrators through time, since reconciliation is a complex and multi-factor process that is impossible to be achieved through a quick closure.⁴³⁵ Nevertheless, the existence of a platform to start the reconciliation process, as well as other effective

⁴³⁰ POPKIN, M.; ROHT-ARRIAZA, N., 1995, p. 99.

⁴³¹ BLOOMFIELD, D.; BARNES, T.; HUYSE, L., 2003, p. 145-161.

⁴³² POPKIN, M.; ROHT-ARRIAZA, N., 1995, p. 100.

⁴³³ WIEBELHAUS-BRAHM, E., 2007.

⁴³⁴ CHAPMAN, Audrey R – Truth commissions and intergroup forgiveness: The case of the South African Truth and Reconciliation Commission, 2007, p. 62-66.

⁴³⁵ BAKINER, O., 2016, p. 105.

mechanisms to achieve it can attribute the causal factuality of reconciliation through consensus to the truth commission's efforts, stating its positive impact.

6.6.1- The CNV's reconciliation through consensus

The platforms of interaction, established⁴³⁶ in order to promote society's participation in the process of investigation, were modern and important attempts to achieve this parameter. However, reconciliation does not rest only on the victims participation on a commissions proceedings, but rather in the actual implementation of politics of forgiveness.

The lack of participation by the militaries - as they refused to contribute with the commission's work -,⁴³⁷ the critics on the transparency and accessibility to the investigation⁴³⁸ and the lack of a policy that carries the legacy of the commission, are evidence that the CNV was not able to achieve a reconciliation between victims and perpetrators. Although the role of a commission is to be a bridge between those two groups, both of them lacked representability on the commission's staff.⁴³⁹ Therefore, due to the lack of participation, or perhaps because the operations focused on analysing official documents and collecting data,⁴⁴⁰ the CNV was not able to achieve this reconciliation through consensus.

6.7- Impact on Social norms

Truth commissions aim to produce long-term effects and to cultivate a civic culture based on nonviolence and human rights protection. To achieve its objectives, the transformative potential of the commissions has

⁴³⁶ See topic 5.1.4

⁴³⁷ See topic 5.2.1.2

⁴³⁸ See topic 5.1.2

⁴³⁹ See topic 5.1.2

⁴⁴⁰ See topic 5.2.1.1

to reach normative changes, as way to internalise nonviolence and respect for human rights.⁴⁴¹

While evaluating a truth commission's impact on social norms, two specific causal effects should be observed: (1) widespread access to the final report of the truth commission (as well as other similar audio-visual documentation), measuring governmental and nongovernmental attempts to popularise the commission's work; (2) incorporation of the commission's recommendations into the school curriculum.⁴⁴²

Truth commissions can foster a spirit of respect for human rights protection in society, as during and in the aftermath of the commission's work, people tend to write memoirs, create movies, documentaries and theatrical productions as a form to recount the events based on the testimonies and facts that were uncovered in the process.⁴⁴³ The commission's work can also stimulate discussions on radio, television, and the internet, increasing public awareness of the proceedings and the importance of human rights protection. Knowing the truth is just the first step, and making it accessible to the public is the real achievement to be reached.⁴⁴⁴ Having these causal effects as a starting point, the impact of social norms can be found through (1) identifying attempts to increase public awareness of the truth commissions work, (2) society's mobilisation to popularise its findings, and (3) the incorporation of its work inside the national education program..

6.7.1 - The CNV's impact on social norms

Although the commission expressed the necessity to implement its findings, and the promotion of human rights, in the schools' curriculums and military academies, the Brazilian State not only failed to

⁴⁴¹ BAKINER, O, 2016, p. 105.

⁴⁴² BAKINER, O., 2016, p. 105.

⁴⁴³ COELHO FILHO, Paulo – Truth Commission in Brazil: Individualizing Amnesty, 2012.

⁴⁴⁴ CROKER, D. A., 2000, p. 30.

apply these recommendations, but also shortened the requirement of human studies in the curriculum.⁴⁴⁵

As of 2018, the discussions and promotion of the contents in the final report are done by civilians and organisations. They organise public events, invite former CNV's staffs to talk and explain the contents of the final report, and develop other ways to encourage wider discussion,⁴⁴⁶ since the CNV didn't adapt the report to a wider audience as it was done in other commissions around the world.⁴⁴⁷

Therefore, even though society's mobilisations to spread commission's findings are a result of the CNV's work, they cannot be a signal of its effectiveness, as they do not rest on the causal factuality of the CNV. That means that their existence is not a result of the commission's efforts, revealing a negative impact of the CNV on social norms.

6.8- Positive judicial impact

Commissions are independent investigative bodies, and though they have an array of powers to investigate and achieve their objectives, they are not allowed to deliver sentences. Their findings, however, may be used as evidence or contextual information in criminal proceedings, as a way to achieve accountability of the past human rights atrocities.⁴⁴⁸

The judicial impact rests on three main causal factors: (1) the judicial powers that are granted to the truth commission's mandate; (2) the willingness of judges, prosecutors and the legal system to incorporate the commission's findings in the process of accountability; (3) the existence of amnesty procedures, and laws operating simultaneously or as a result of the commission.⁴⁴⁹ The absence of these causal factors, however, is not

⁴⁴⁵ See topic 5.1.7.2

⁴⁴⁶ SCHNEIDER, N.; DE ALMEIDA, G. I., 2018. p. 646.

⁴⁴⁷ See topic 5.3

⁴⁴⁸ CROKER, D., 2000, p. 26-27.

⁴⁴⁹ BAKINER, O., 2016, p. 106.

the only signal of the lack of effectiveness on the truth commission, as there is a duality on its judicial impact.

The positive judicial impact emerges when the use of search and subpoena powers, as well as the power to name perpetrators, are used as tools to achieve the reconciliation and investigatory objectives,⁴⁵⁰ and when the results of the truth commission are used to start the processes of accountability.⁴⁵¹

On the other hand, the negative judicial impact comes along with the vision that truth commissions serve to perpetuate impunity, especially in cases where they have amnesty laws built into their mandates, like the South African truth commission.⁴⁵² There is also an idea, in places where truth commissions are seen as a moderate transitional justice tool, that their “spectacle” creates a distraction from prosecution⁴⁵³ The aims to achieve reconciliation between victims and perpetrators, using procedures of negotiation to achieve consensus, are viewed in those places as having to choose between justice and truth.⁴⁵⁴

Tracing the causal factuality of the judicial impact of the truth commission’s work is an analysis of the main indicators that results from its recommendations. This means that, if the work of a truth commission results in impunity due to amnesty procedures (created by or along with the commission’s work), or society’s demobilisation caused by the “distraction” or “spectacle” of the commissions’ work,⁴⁵⁵ there is a negative judicial impact. However, the existence of accountability and incorporation of the truth commission’s findings in court proceedings, along with the existence of judicial powers in the truth commission’s mandate and its effective usage to achieve its investigatory objectives⁴⁵⁶, show a positive judicial impact.

⁴⁵⁰ FREEMAN, M., 2006.

⁴⁵¹ BAKINER, O., 2016, p. 107.

⁴⁵² COELHO FILHO, Paulo, 2012.

⁴⁵³ BAKINER, O., 2016, p. 107.

⁴⁵⁴ ELSTER, Jon. Closing the books: Transitional justice in historical perspective, 2004, p. 116-117.

⁴⁵⁵ BAKINER, O., 2016, p. 109.

⁴⁵⁶ FREEMAN, M., 2006.

6.8.1 - The CNV's judicial impact.

The two most expressive signs of a judicial impact of a truth commission are the existence of criminal accountability on human rights abuses⁴⁵⁷ and the existence of an amnesty process as a result (or in consonance) of the commission's work, however,⁴⁵⁸ both of these causal factors had a negative response in Brazil's CNV. As it was extensively highlighted in this study, the lack of accountability to the human rights abuses are a problem with no perspective of solution, due to a series of normative, judicial and political barriers.⁴⁵⁹

Brazil's amnesty process was not due to the commission's work, or even a result of its proceedings, but a tool used in the transition to democracy, with a conciliatory purpose⁴⁶⁰. Consequently, the existence of an amnesty law in Brazil is not an indication of a positive judicial impact, especially because this amnesty was actually an obstacle to overcome⁴⁶¹ in order to achieve the CNV's objectives.

Concerning the judicial powers that were given to the CNV,⁴⁶² a positive response can be identified, as the CNV had a wide range of powers to conquer its objectives. However, considering the perpetuation of impunity⁴⁶³ and the fact that most of the military officials simply ignored official letters asking them to collaborate with the investigations (negative causal factors),⁴⁶⁴ it is possible to affirm that the CNV's main purposes weren't achieved.

⁴⁵⁷ BAKINER, O., 2016, p. 48.

⁴⁵⁸ See topic 4.2

⁴⁵⁹ See topic 4.2

⁴⁶⁰ See topic 4.2

⁴⁶¹ SKAAR, E.; GARCIA-GODOS, J.; COLLINS, C., 2016. p. 107

⁴⁶² See topic 5.1.1

⁴⁶³ SKAAR, E.; GARCIA-GODOS, J.; COLLINS, C., 2016. p. 106-107.

⁴⁶⁴ See topic 5.1.7.1

6.9 – The CNV's Overall Impact.

To set the actual effectiveness of the CNV's impact it was necessary to analyse a diverse array of causal factors that could transmit either a positive or a negative result, leading to a real answer on the commission's work. First, concerning its political impact, the negative results rest on the lack of commitment to the commission's recommendations, along with the fact that an institution to carry out the commission's work was not created (even though it was one of the main recommendations set by the commissions).⁴⁶⁵ It is also good to remember that the unofficial truth projects were a reaction to the unwillingness of the Brazilian state to establish a truth commission,⁴⁶⁶ and that some local commissions were established to fill the gap left by the works of the CNV, and even challenged some of its findings⁴⁶⁷. With that in mind, it's possible to realize that the overall political impact of the commission was not enough.⁴⁶⁸

Next, the unwillingness to apply any vetting tools in Brazil's public administration, along with the ineffective delegitimization process, are another important causal factor of the CNV. The perpetrators are still in positions of power, people in Brazil are claiming for the return of the military rule, and most of Brazil's citizens are unaware of the commission's findings, due to another negative response that rests on its impact on Social Norms. More so, the final report is not reader friendly⁴⁶⁹, as it was not adapted to the general public, and its findings are unlikely to be implemented in Brazil's national education program. The CNV was also unable to achieve reconciliation through consensus, as victims and perpetrators were not able to interact through the commission's proceedings, characterising another negative impact.

⁴⁶⁵ See topic 5.1.7.5.

⁴⁶⁶ See topic 4.3.

⁴⁶⁷ See topic 5.3.

⁴⁶⁸ See topic 5.1.6.

⁴⁶⁹ See topic 5.3.

The last causal factor to set the effectiveness of the CNV rests on its judicial impact. Because the Amnesty law - which came way before the works of the CNV - left big problems to the judiciary branch, it repeatedly failed on achieving any processes of accountability.⁴⁷⁰ Therefore, Brazil's CNV was only able to highlight the need of accountability but failed to actually implement it, showing that its judicial impact rested on a negative response.

These indicators set that the impact of the CNV was not effective on dealing with these past human rights abuses. Therefore, it showed that the commission was a way to acknowledge some of the perpetrators and to officially recognize the massive human rights abuses that occurred in the past, while emphasizing that the State's inability to hold these crimes accountable will persist through time.

⁴⁷⁰ See topic 4.2.

7 – Conclusion.

The objective of this research is to analyse if Brazil's truth commission was an effective tool on dealing with the past. To answer this question, it's necessary to look back at the main purposes of a truth commission, and wonder if their primary objective is to report and rewrite national history, in order to achieve the guarantees of non-repetition, or to do an official acknowledgement of previously silenced public crimes.

Through an analysis of the evolution of transitional justice as a field, we were able to identify the main purposes of these tools and the current role of the CNV, which is actually a way to rewrite national history, acknowledging violations and victims redress, and focusing on strategies to prevent them from ever happening again.⁴⁷¹ In order to analyse these purposes, this research highlighted the truth commissions - and how they evolved from a process used only in a transition towards democracy, to an independent investigative body established to deal with the past, devoid any need of a political transition -, showing how they are able to achieve reconciliation and effectively dealing with past human rights abuses.

But what exactly were the events that led into the need to create a truth commission? This question was answered as we went through an analysis of the political, historical and socio-economic placement of this research, investigating the events that led into the creation of the CNV. This paper highlighted, in that matter, the political crisis, the inflation and economic crisis, along with an illusion of danger caused by the communist influence on Latin America - which was supported by the international community, with stronger ties to the United States, as a way to strengthen its bipolar influence during the cold war. This sense of danger that was spread through civil-society was used by the militaries to validate their cue back in 1964,⁴⁷² and as we analysed the effects of the repression, its

⁴⁷¹ THE INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE, 2018.

⁴⁷² See Topic 4.1.

abuses, and how Brazilian society suffered during this time, we raised a question about the legacy left by the dictatorship: Why was Brazil's CNV formed so late?

To answer it, this research pointed out the unofficial truth projects, society's attempts towards accountability of these massive human rights abuses, and how they were used as a basis for the CNV's work, which led to an analysis of its proceedings on chapter 4. As a consequence of this analysis, it was possible to identify the negative and positive aspects of the CNV to come to a conclusion: overall, considering its technical aspects, Brazil's truth commission was an ambitious project, established to investigate more than it could actually reach.⁴⁷³ However, its work had positive aspects, such as being a pioneer on establishing local commissions,⁴⁷⁴ creating a diverse array of initiatives on publicising and giving transparency to the process of investigation,⁴⁷⁵ and being the first official statement that publicly recognises the Brazilian State's responsibility for the systematic violence and massive human rights abuses.⁴⁷⁶

Therefore, the CNV technicalities seem to establish it as a successful truth commission, achieving its main purpose to publish a final report⁴⁷⁷, work as an independent investigative body with judicial powers⁴⁷⁸ and have its work recognised as an official document. Although the CNV was limited by various mechanisms of state control, the commissioners succeeded to overcome the obstacles to produce a final report, as a result of a complex and dynamic negotiation process between state officials with divergent points of view and the local commissions, while also having to respond to society's demands.⁴⁷⁹

⁴⁷³ See topic 5.1.1.

⁴⁷⁴ See topic 5.1.2.

⁴⁷⁵ See topic 5.1.4.

⁴⁷⁶ See topic 5.1.7.1.

⁴⁷⁷ See topic 5.1.5.

⁴⁷⁸ See Topic 5.1.1.

⁴⁷⁹ SCHNEIDER, N. DE ALMEIDA, G. I., 2018. p. 647.

However, the actual effectiveness of a truth commission goes beyond its process of investigation, and its technical aspects. Rather, it refers to the causal effects of a commissions process on institutions' and individuals' interests, beliefs, values and decisions.⁴⁸⁰ With that in mind, noticing that the CNV's main achievement was to acknowledge public crimes that were silenced for decades, and that it failed to have an actual effectiveness of this public recognition - since it depended on its usage as a basis for criminal accountability and the application of its recommendations -, it's possible to see a negative aspect of its impact.⁴⁸¹

Starting with the time period for investigation, the CNV had a two years mandate. The mandate, however, didn't consider the need of a period to prepare its proceedings, and the commission ended up spending one year only to establish a modus operandi and setting a support team to work along with the commissioners.⁴⁸² This was a very limited time to operate towards investigating such an ambitious mandate.

Another problem was the fact that most of the commissioners were legal experts, which meant the CNV lacked a multidisciplinary approach that is needed in a commission. This led to another important problem on the results of the CNV: the final report was not a reader-friendly document, since it was extensive and full of legal jargons, which excluded the general public from accessing it. More so, the biggest negative response lays on the fact that, even though the CNV was able to trace a diverse array of recommendations, the State completely lacked commitment to implement them. This shows that the actual impact of the truth commission on the judiciary branch, social norms, Brazil's legal system, and on reconciliation between victims and perpetrators is unlikely to be achieved.

Therefore, it is possible to conclude that the CNV was actually a mere cosmetic fix. Its recommendations had no enforcement by the

⁴⁸⁰ BAKINER, O., 2016. p. 93.

⁴⁸¹ See Topics 6.8.

⁴⁸² WESTHROP, A. J.; GUERNICHARO, L. P.; SIMI, G., 2015, p. 35 and 96.

government, who completely ignored most of them.⁴⁸³ Some local commissions came into conflict with the CNV and criticised their decisions on the investigations.⁴⁸⁴ The commission was not able to achieve reconciliation between victims and perpetrators.⁴⁸⁵ The contents of the final report were important, but its accessibility to the general public was left aside.⁴⁸⁶ All that led to the impossibility to achieve an impact on social norms, as well as a delegitimizing effect.⁴⁸⁷ These indicators of a commission's impact, together with the absence of a vetting process, were some key factors that show how the CNV was not able to lead an institutional reform.⁴⁸⁸ The negative aspects in evaluating the CNV's impact, and the negative points that were exemplified during the analysis of its proceedings, were intangible factors that led us towards concluding that the commission was not an effective tool to deal with the past.

It's important to know that the final report still has time to produce a long-term impact on Brazil's history, but the fact that society is still battling with the need to demystify the fond memory that some Brazilians have from the dictatorship⁴⁸⁹, added to the bad image from the guerrillas - that are seen as terrorists until today (2018)⁴⁹⁰ - seem to perpetuate the obstacles which the CNV was established to overcome.

Therefore, whether the report will be able to produce a long-term impact on Brazilian society will only depend on society's mobilisation⁴⁹¹ to create social movements, artistic representations, educate future generations and produce accessible reports based on the commission's findings. Those, along with spreading information about the past and

⁴⁸³ SCHNEIDER, N. DE ALMEIDA, G. I., 2018. p. 647.

⁴⁸⁴ See Topic 5.1.2

⁴⁸⁵ See topic 6.6.

⁴⁸⁶ See Topic 5.1.1

⁴⁸⁷ See topics 6.5 and 5.7.

⁴⁸⁸ See topics 6.4 and 5.2

⁴⁸⁹ See Topic 5.2.1.2.

⁴⁹⁰ See topic 5.2

⁴⁹¹ SCHNEIDER, N. DE ALMEIDA, G. I., 2018. p. 648.

rewriting collective memory, are the steps to finally achieve the real objective of a truth commission, which is to deal with the past as a way to unveil the truth and guarantee the non-repetition of human rights abuses.

8 – References.

ABREU, Carmen Regina – A disputa entre as Comissões da Verdade pela versão final sobre a morte de JK. **Comunicação & Sociedade**. [Online] 38:2 (2016). [Accessed 25 May 2018]. Available from WWW: <URL: <http://dx.doi.org/10.15603/2175-7755/cs.v38n2p323-342>>.

AIKEN, Nevin T. – Post-Conflict Peacebuilding and the Politics of Identity: Insights for Restoration and Reconciliation in Transitional Justice. **Peace Research**. [Online]. 40:2 (2008), p. 9-38. [Accessed 18 Feb. 2018] Available from WWW: <URL: <http://www.jstor.org/stable/23607796>>.

American Declaration of the Rights and Duties of Man, 1948 [Online]. Washington: Organization of American States. [Accessed 30 Mar. 2018]. Available from WWW: <URL: http://www.cidh.oas.org/basicos/english/basic3.american_convention.htm>.

AMNESTY INTERNATIONAL – Brazil: "They Treat Us Like Animals": Torture and ill-treatment in Brazil: Dehumanization and impunity within the criminal justice system. **Amnesty International**. [Online]. (2001) [Accessed 05 Apr. 2018] Available from WWW: <URL: <https://www.amnesty.org/download/Documents/124000/amr190222001en.pdf>>.

ARNOSO, Maitane, [et al] – La Comisión de Verdad y Justicia: percepción de eficacia en Paraguay. **Revista Internacional de Investigación en Ciencias Sociales**. [Online]. 10:2 (2014), p. 154-168. [Accessed 27 Feb. 2018]. Available from WWW: <URL:

<http://revistacientifica.uaa.edu.py/index.php/riics/article/view/217>>. ISSN 2225-5117

ARNS, Paulo Evaristo – **Brasil: Nunca Mais**. São Paulo: Vozes, 1996. ISBN 8532600301.

Ato Institucional no 1, 1964. [Online]. Brasília: Diário Oficial da União. [Accessed 30 Mar. 2018]. Available from WWW:<[URL:http://www.planalto.gov.br](http://www.planalto.gov.br)>.

Ato Institucional no 5, 1968. [Online]. Brasília: Diário Oficial da União. [Accessed 30 Mar. 2018]. Available from WWW:<[URL:http://www.planalto.gov.br](http://www.planalto.gov.br)>.

BAER, Werner – Industrialization and Economic Development in Brazil. **The American Economic Review**. [Online]. 56:3 (1966), p. 576-578. [Accessed 01 Mar. 2018]. Available from WWW:<[URL:https://www.jstor.org/stable/1823807?seq=1-page scan tab contents](https://www.jstor.org/stable/1823807?seq=1-page%20scan%20tab%20contents)>.

BAKINER, Onur – **Truth Commissions: Memory, Power, and Legitimacy**. Pennsylvania: University of Pennsylvania Press, 2016. ISBN 978-0-8122-4762-6.

BAKINER, Onur. Truth Commission Impact: An assessment of how commissions influence politics and society. **International Journal of Transitional Justice**. [Online]. 8:1 (2014). [Accessed 01 May 2018]. Available from WWW: <[URL:https://doi.org/10.1093/ijtj/ijt025](https://doi.org/10.1093/ijtj/ijt025)>.

BAUER, Caroline Silveira. A produção dos relatórios Nunca Mais na Argentina e no Brasil: aspectos das transições políticas e da constituição

da memória sobre a repressão. **Revista de História Comparada**. [Online] 2:1 (2008). [Accessed 06 Apr. 2018]. Available from WWW: <URL: <https://revistas.ufrj.br/index.php/RevistaHistoriaComparada/article/view/135>>. ISSN 1981-383X

BELL, Christine – Transitional Justice, Interdisciplinarity and the State of the ‘Field’ or ‘Non-Field’. **International Journal of Transitional Justice**. [Online]. 3:1 (2009), p. 5-27. [Accessed 01 Feb. 2018]. Available from WWW: <URL:<https://doi.org/10.1093/ijtj/ijn044>>.

BICKFORD, Louis – Unofficial truth projects. **Human Rights Quarterly**. 29:4 (2007), p.994-1035. [Accessed 16 Apr. 2018]. Available from WWW: <URL: <https://muse.jhu.edu/article/223895>>. ISSN 1085-794X

BERTAZZO, Juliana – Brazilian Security and Defence Policy under President Dilma Rousseff: Transition and Initial Challenges. **Critical Sociology**. [Online]. 38:6 (2012) p. 809-821 [Accessed 01 Apr. 2018]. Available from WWW: <URL:<https://doi.org/10.1177/0896920512441634>>.

BLOOMFIELD, David; BARNES, Terri; HUYSE, Luc – **Reconciliation after violent conflict: A handbook**. Sweden: International Idea, 2003. ISBN 91-89098-91-9.

BRANDÃO, Gildo Marçal – A ilegalidade mata: o Partido Comunista e o sistema partidário (1945-64). **Revista Brasileira de Ciências Sociais**. [Online]. (1997) [Accessed 01 Mar. 2018] Available from WWW:<URL: http://www.anpocs.org.br/portal/publicacoes/rbcs_00_33/rbcs33_02.htm>.

BRASIL – **Direito à Verdade e à Memória: Comissão Especial sobre Mortos e Desaparecidos Políticos**. Brasília: Secretaria Especial dos Direitos Humanos, 2012. ISBN 978-85-60877-00-3.

BRASIL: NUNCA MAIS – Brasil Nunca Mais. [Online] (2016) [Accessed 01 Jun. 2018] Available from WWW:<URL: <http://bnmdigital.mpf.mp.br/pt-br>>.

BRASIL – **Vala Clandestina de Perus: desaparecidos políticos, um capítulo não encerrado da história brasileira.** São Paulo: Ed. Do Autor, 2012. ISBN 978-85-00000-00-0

BRASIL; SUPREMO TRIBUNAL FEDERAL – Arguição de Descumprimento de Preceito Fundamental n. 153. **Inteiro Teor do Acórdão.** [Online]. (2010) [Accessed 04 April, 2018]. Available from WWW:<URL:<http://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=AC&docID=612960>>.

BRASIL; VERDADE, Comissão Nacional da – **A Instalação da Comissão Nacional da Verdade.** [Online]. Brasília: CNV (2012), [Accessed 8 Apr. 2018]. Available from WWW:<URL:<http://cnv.memoriasreveladas.gov.br/institucional-acesso-informacao/a-cnv/57-a-instalacao-da-comissao-nacional-da-verdade.html>>.

BRASIL; VERDADE, Comissão Nacional da – **Arquivo Nacional.** [Online]. Brasília: CNV (2014), [Accessed 10 May 2018]. Available from WWW:<URL:http://cnv.memoriasreveladas.gov.br/index.php?option=com_content&view=article&id=364>.

BRASIL; VERDADE, Comissão Nacional da – **Caso JK.** [Online]. Brasília: CNV (2015), [Accessed 8 May 2018]. Available from WWW:<URL:<http://www.cnv.gov.br/outrosdestaques/564-caso-jk-justica->

[federal-extingue-acao-movida-pela-comissao-da-verdade- de-sao-paulo- contra-a-cnv.html](#)>.

BRASIL; VERDADE, Comissão Nacional da – **Comissão Nacional da Nota da CNV sobre os 50 anos do golpe de 1964**. [Online]. Brasília: CNV (2014), [Accessed 8 May 2018]. Available from WWW:<URL: <http://cnv.memoriasreveladas.gov.br/outros-destaques/457-nota-da-cnv-sobre-os-50-anos-do-golpe-de-estado-de-1964.html>>.

BRASIL; VERDADE, Comissão Nacional da – **CNV requer às Forças Armadas que apurem como instalações militares foram usadas para tortura**. [Online]. Brasília: CNV (2014), [Accessed 8 May 2018]. Available from WWW:<URL: <http://cnv.memoriasreveladas.gov.br/outros-destaques/432-cnv-requer-as-forcas-armadas-que-apurem-como-instalacoes-militares-foram-usadas-para-tortura.html>>.

BRASIL – **Dilma recebe relatório final da Comissão Nacional da Verdade**. [Online] Brasília: Governo do Brasil, (2014). [Accessed 8 Jun. 2018]. Available from WWW:<URL:<http://www.brasil.gov.br/governo/2014/12/dilma-recebe-relatorio-final-da-comissao-nacional-da-verdade>>.

BRASIL; VERDADE, Comissão Nacional da – **Entenda como será feita a exumação de João Goulart**. [Online]. Brasília: CNV (2013). [Accessed 8 May 2018]. Available from WWW:<URL:<http://cnv.memoriasreveladas.gov.br/outros-destaques/376-entenda-como-sera-exumacao-do-ex-presidente-joao-goulart.html>>.

BRASIL; VERDADE, Comissão Nacional da – **Missão preparatória para a exumação de restos mortais de João Goulart acontece dia 21**.

[Online]. Brasília: CNV (2013), [Accessed 8 May 2018]. Available from WWW:<[URL:http://cnv.memoriasreveladas.gov.br/outros-destaques/311-missao-preparatoria-para-a-exumacao-de-restos-mortais-de-joao-goulart-acontece-dia-21.html](http://cnv.memoriasreveladas.gov.br/outros-destaques/311-missao-preparatoria-para-a-exumacao-de-restos-mortais-de-joao-goulart-acontece-dia-21.html)>.

BRASIL; VERDADE, Comissão Nacional da – **Relatório Comissão Nacional da Verdade: Volume I**. [Online]. Brasília: CNV, (2014a). [Accessed 8 Mar. 2018]. Available from WWW:<[URL:http://www.cnv.gov.br/images/pdf/relatorio/volume_1_digital.pdf](http://www.cnv.gov.br/images/pdf/relatorio/volume_1_digital.pdf)>. ISBN 978-85-85142-64-3.

BRASIL; VERDADE, Comissão Nacional da – **Relatório Comissão Nacional da Verdade: Volume III**. [Online]. Brasília: CNV, (2014c). [Accessed 8 Mar. 2018]. Available from WWW:<[URL:http://www.cnv.gov.br/images/pdf/relatorio/volume_1_digital.pdf](http://www.cnv.gov.br/images/pdf/relatorio/volume_1_digital.pdf)>. ISBN 978-85-85142-64-3.

BROUNÉUS, Karen – Truth-telling as talking cure? Insecurity and retraumatization in the Rwandan Gacaca courts. **Security Dialogue**. [Online]. 39:1 (2008), p.55-76, 2008. [Accessed 26 Feb. 2018]. Available from WWW: <[URL:https://doi.org/10.1177/0967010607086823](https://doi.org/10.1177/0967010607086823)>.

BUCKLEY-ZISTEL, Susanne, [et al] – **Transitional Justice Theories**. Oxon: Routledge, 2014. ISBN 978-1-138-92445-1.

CARRILHO JUNIOR, Paulo Almeida – ADPF: Arguição de descumprimento de preceito fundamental. Conceito de preceito fundamental. Fundamento lógico-transcendental da validade da constituição jurídico-positiva. **Âmbito Jurídico**. 14:91 (2011). Available from WWW: <[URL:http://www.ambito-](http://www.ambito-)

juridico.com.br/site/?n_link=revista_artigos_leitura&artigo_id=10158&revista_caderno=9>. [Accessed 05 Apr. 2018].

CASSESE, Antonio – **International Law**. Oxford: Oxford University Press, 2005. ISBN 0-19-925939-9.

CEMDP – **Comissão Especial Sobre mortos e Desaparecidos Políticos. Direito à Verdade e à Memória**. [Online] Brasília: Secretaria Especial dos Direitos Humanos (2007) [Accessed 06 Apr. 2018]. Available from WWW: <URL:<http://www.sdh.gov.br/assuntos/mortos-e-desaparecidos-politicos/pdfs/livro-direito-a-memoria-e-a-verdade>>.

CHAPMAN, Audrey R. – Truth commissions and intergroup forgiveness: The case of the South African Truth and Reconciliation Commission. **Peace and Conflict: Journal of Peace Psychology**. [Online] 13:1 (2007), p.51-69. [Accessed 01 Jun. 2018]. Available from WWW: <URL:<http://dx.doi.org/10.1037/h0094024>>.

COELHO FILHO, Paulo – Truth commissions and intergroup forgiveness: The case of the South African Truth and Reconciliation Commission. Truth Commission in Brazil: Individualizing Amnesty, Revealing the Truth. **The Yale Review of International Studies**. [Online]. (2012). [Accessed 01 Jun. 2018]. Available from WWW: <URL: <http://yris.yira.org/essays/440>>.

Constituição da República Federativa do Brasil de 1988. [Online] Presidência da República: Casa Civil Subchefia para Assuntos Jurídicos. [Accessed 30 Mar. 2018]. Available from WWW:<[URL:http://www.planalto.gov.br](http://www.planalto.gov.br)>.

COHEN, Youssef – Democracy from above: the political origins of military dictatorship in Brazil. **World Politics**, [Online] 40:1 (1987), p.30-54. [Accessed 01 Mar. 2018]. Available from WWW: <URL: https://www.jstor.org/stable/2010193?seq=1#page_scan_tab_contents>.

COIMBRA, Cecília Maria Bouças – Práticas psi e tortura no Brasil. **Revista Psicologia Política/Sociedade Brasileira de Psicologia Política**. 1:2, (2001) [Accessed 21 Apr. 2018]. Available from WWW: <URL: <http://www.each.usp.br/rpp/index.php/RPPEACH/article/view/170>>.

CONADEP – **Nunca Más: Informe de la Comisión Nacional sobre la desaparición de personas**. Buenos Aires: Editorial Universitaria de Buenos Aires, 1984.

CONNECTAS, Direitos Humanos – Comissão Nacional da Verdade na OEA. **Conectas Direitos Humanos** [Online], (2015). [Accessed 01 Apr. 2018]. Available from WWW: <URL: <http://www.conectas.org/noticias/comissao-nacional-da-verdade-na-oea>>.

CONOT, Robert E. – **Justice at Nuremberg**. New York: Basic Books, 1993. ISBN 978-0-88-184032-2.

CROCKER, David A – Truth Commissions and Transitional Justice. **Philosophy and Public Policy Quarterly**. 20:4 (2000), p. 23-31.

CROCKER, David A – Reckoning with past wrongs: A normative framework. **Ethics & International Affairs**. [Online] 13:1 (1999), p. 43-64 [Accessed 01 Feb. 2018]. Available from WWW: <URL: <https://www.cambridge.org/core/journals/ethics-and-international-affairs/article/reckoning-with-past-wrongs-a-normative-framework/16461AEF2A8577D5E0F3E936E106B94E>>.

DANCY, Geoff; KIM, Hunjoon; WIEBELHAUS-BRAHM, Eric – The turn to truth: Trends in truth commission experimentation. **Journal of Human Rights**. [Online]. 9:1 (2010), p. 45-64 [Accessed 23 Feb. 2018] Available from WWW: <URL: <https://www.tandfonline.com/doi/abs/10.1080/14754830903530326>>.

DE CARVALHO, José Murilo – **Forças Armadas e política no Brasil**. São Paulo: Zahar, 2005. ISBN 8571108560.

DE CARVALHO, José Murilo – **Cidadania no Brasil: O longo caminho**. Rio de Janeiro: Civilização Brasileira, 2001. ISBN 9788520005651.

DE OLIVEIRA, Hebe Maria Gonçalves – Retrato das manifestações de rua no processo de impeachment da presidenta Dilma Rousseff: a construção da opinião pública pela mídia privada brasileira. **Pauta Geral**. [Online]. 3:2 (2016) [Accessed 30 May 2018]. Available from WWW:<URL:<http://www.revistas2.uepg.br/index.php/pauta/article/view/9369>>.

Decreto-lei nº 1.001, de 21 de outubro de 1969 [Online]. Brasília: Código penal Militar [Accessed 30 May 2018]. Available from WWW:<URL:<http://www.planalto.gov.br>>.

Decreto no 2.193, de 7 de abril de 1997, Aprova a Estrutura Regimental do Ministério da Justiça. Brasília: Diário Oficial da União. [Accessed 30 Mar. 2018]. Available from WWW:<URL:<http://www.planalto.gov.br>>.

DE GRIEFF, Pablo – **The Handbook of Reparations**. New York: Oxford University Press, 2006. ISBN: 9780199291922.

DE GREIFF, Pablo; DUTHIE, Roger – Transitional Justice and Development. In **International Development: Ideas, Experience, and Prospects**. New York: Oxford University Press, 2013. ISBN 9780199671656.

DELGADO, Lucilia de Almeida Neves; FERREIRA, Jorge – **O Brasil Republicano, vol. 3: O tempo da experiência democrática**. Rio de Janeiro: Civilização Brasileira, 2003. ISBN 8520006248.

DE MELLO, Felipe Corrêa; BACCEGA, Maria Aparecida – Imprensa e discurso histórico: a Comissão Nacional da Verdade na Folha de São Paulo e no Estado de São Paulo. **Comunicação & Educação**. [Online] 20:1 (2015). [Accessed 01 Jun. 2018]. Available from WWW: <[URL:http://www.revistas.usp.br/comueduc/article/view/90106](http://www.revistas.usp.br/comueduc/article/view/90106)>.

DUTHIE, Roger – Toward a Development-sensitive Approach to Transitional Justice. **International Journal of Transitional Justice** [Online]. 2:3 (2008), p. 292-309. [Accessed 01 Feb. 2018]. Available from WWW: <[URL:https://doi.org/10.1093/ijtj/ijn029](https://doi.org/10.1093/ijtj/ijn029)>. DOI:10.1093/ijtj/ijn029.

ÉBOLI, Evandro – **O custo da reparação: indenizações aprovadas na Comissão de Anistia chegam a R\$ 3,4 bilhões**. [Online] Rio de Janeiro:O Globo (2014). [Accessed 01 June. 2018]. Available from WWW:<[URL:https://oglobo.globo.com/brasil/o-custo-da-reparacao-indenizacoes-aprovadas-na-comissao-de-anistia-chegam-r-34-bilhoes-12037526](https://oglobo.globo.com/brasil/o-custo-da-reparacao-indenizacoes-aprovadas-na-comissao-de-anistia-chegam-r-34-bilhoes-12037526)>

ÉBOLI, Evandro – **Closing the books: Transitional justice in historical perspective**. New York: Cambridge University Press, 2004. ISBN: 9780511607011.

FAUSTO, Boris – **Historia concisa de Brasil**. São Paulo: Edusp, 2015. ISBN 9788531415821

FILHO, Romualdo Pessoa Campos – **Guerrilha do Araguaia: A esquerda em armas**. São Paulo: Anita Garibaldi Fundação Maurício Grabois, 2012. ISBN 9788572771115

FREEMAN, Mark. **Truth commissions and procedural fairness**. New York: Cambridge University Press, 2006. ISBN 978-0-521-61564-8.

GOMBATA, Marsílea. **O descompasso das comissões da verdade. Carta Capital**. [Online] (2014). [Accessed 12 May 2018]. Available from WWW: <URL:<https://www.cartacapital.com.br/sociedade/o-descompasso-das-comissoes-da-verdade-5152.html>>.

GOMES-LUND, [et al] – **(Guerrilha do Araguaia) v. Brazil. Inter-American Court of Human Rights (IACrTHR)**, [Online]. (2010) [Accessed 06 May 2018]. Available from WWW: <URL:<http://www.refworld.org/cases,IACRTHR,4d469fa92.html>>.

GONZÁLEZ, Eduardo – Observações sobre o Mandato Legal da Comissão Nacional da Verdade do Brasil. **International Center for Transitional Justice–ICTJ**. [Online]. (2012) [Accessed 20 Feb. 2018]. Available from WWW:<URL:<https://ictj.org/sites/default/files/ICTJ-ObservacionesCNV-Brazil-PORT.pdf>>.

GRANT, Ruth W.; KEOHANE, Robert O. Accountability and abuses of power in world politics. **American political science review**. [Online] 99:1,

p. 29-43 (2005) [Accessed 20 May. 2018]. Available from WWW:<<http://www.jstor.org/stable/30038917>>.

GUIMARÃES, Marco Aurelio, [et al]. – Forensic investigation, truth and trust in the context of transitional justice in Brazil. **Human Remains and Violence: An Interdisciplinary Journal** [Online]. 3:2 (2017), p.74-97 [Accessed 19 Feb 2018]. Available from WWW:<[URL:https://www.researchgate.net/publication/315744716_Forensic_investigation_truth_and_trust_in_the_context_of_transitional_justice_in_Brazil](https://www.researchgate.net/publication/315744716_Forensic_investigation_truth_and_trust_in_the_context_of_transitional_justice_in_Brazil)>. DOI: 10.7227/HRV.3.2.6

GUTO – **Voto de Jair Bolsonaro a favor do impeachment**. [Online] California: Youtube, (2016) [Accessed 05 Jun. 2018] Available from WWW: <[URL:https://www.youtube.com/watch?v=54KUDU-u1P0](https://www.youtube.com/watch?v=54KUDU-u1P0)>.

HANSEN, Thomas Obel – **The vertical and horizontal expansion of transitional justice**. [Online]. (2016) [Accessed 05 Feb. 2018] Available from WWW: <[URL:https://ssrn.com/abstract=1994382](https://ssrn.com/abstract=1994382)>.

HAYNER, Priscilla B – **Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions**. Oxon: Routledge, 2011. ISBN 978-0-415-80635-0.

HAYNER, Priscilla B. – Fifteen truth commissions-1974 to 1994: a comparative study. **Human Rights Quarterly**. 16:4 (1994), p. 597-655.

HAZAN, Pierre – **Judging Warm Judging History: Behind Truth and Reconciliation**. Stanford: Stanford University Press, 2010. ISBN: 978-0-80476956-3.

HIRST, Megan. Too much friendship, too little truth: Monitoring Report on the Commission of Truth and Friendship in Indonesia and Timor-Leste. **International Center for Transitional Justice**. [Online]. (2008) [Accessed 25 Feb. 2018] Available from WWW:<URL: <https://www.ictj.org/publication/too-much-friendship-too-little-truth-monitoring-report-commission-truth-and-friendship>>

HUNTINGTON, Samuel P. – **The third wave: Democratization in the late twentieth century**. Norman: University of Oklahoma Press, 1993. ISBN 0-8061-2516-0.

Inter-American Convention on Human Rights, 1969 [Online]. Washington: Inter-American Commission on Human Rights of the Organization of American States [Accessed 30 Mar. 2018]. Available from WWW:<URL:http://www.cidh.oas.org/basicos/english/basic3.american_convention.htm>.

JEONG, Ho-Won – **Peace Building in Postconflict Societies: Strategy and Process**. Colorado: Lynne Rienner Publishers 2005. ISBN 978-1-58826-335-3.

JONES, Briony; BERNATH, Julie – **Resistance and transitional justice**. Oxon: Routledge, 2018. ISBN 978-0-415-78504-4.

KAPPES, Jefferson – **A Guerrilha do Araguaia: A luta armada no campo suas consequências históricas**. Chapecó: Universidade Federal da Fronteira do Sul, 2017.

LAPLANTE, Lisa J.; THEIDON, Kimberly Susan. Truth with consequences: Justice and reparations in post-Truth Commission Peru. **Human Rights Quarterly**. [Online] 29:1 (2007), p. 228-250 [Accessed 16 Feb. 2018] Available from WWW:<URL:<https://ssrn.com/abstract=1311687>>. ISSN 1085-794X.

Lei no 6.683, de 28 de agosto de 1979. [Online] Brasília: Diário Oficial da União. [Accessed 30 Mar. 2018]. Available from WWW:<URL:<http://www.planalto.gov.br>>.

Lei no 9.140 de 04 de Dezembro de 1995, Reconhece como mortas pessoas desaparecidas em razão de participação, ou acusação de participação, em atividades políticas, no período de 2 de Setembro de 1961 a 15 de Agosto de 1979. [Online]. Brasília: Diário Oficial da União. [Accessed 30 Mar. 2018]. Available from WWW:<URL:<http://www.planalto.gov.br>>.

Lei no 12.528 de 18 de Novembro de 2011, Cria a Comissão Nacional da Verdade. [Online]. Presidência da República: Casa Civil, Subchefia para Assuntos Jurídicos [Accessed 30 Jan. 2018]. Available from WWW:<URL:<http://www.planalto.gov.br>>.

LUBAN, David – **Legal Modernism**. Michigan: The University of Michigan Press, 1994. ISBN 0-472-08439-9.

MARIGHELLA, Carlos – **Manual do guerrilheiro urbano**. [Online] Joinville: Clube de Autores (2010) [Accessed 25 Mar. 2018] Available from WWW:<URL:www.documentosrevelados.com.br/wp-content/uploads/2015/08/carlos-marighellamanual-do-guerrilheiro-urbano.pdf>. ISBN 978-1515200697.

MARTINS, R. – **Especialistas criticam foco excessivo da CNV em casos j. sabido.**[Online] São Paulo: Carta Capital (2014). [Accessed 25 May 2018]. Available from WWW:<URL: <http://www.cartacapital.com.br/sociedade/especialistas-criticam-foco-excessivo-da-cnv-em-casos-ja-sabidos-1125.html> >.

MAYER-RIECKH, Alexander – **Justice as prevention: vetting public employees in transitional societies.** New York: Social Science Research Council, 2006. ISBN 978-0-9790772-1-0.

MAYER-RIECKH, Alexander – Guarantees of Non-Recurrence: An Approximation. **Human Rights Quarterly.**[Online] 39:2, p. 416-448 (2017). [Accessed 06 Jun. 2018] Available from WWW:<URL: [URL:http://10.1353/hrq.2017.0024](http://10.1353/hrq.2017.0024) >. ISSN 1085-794X.

MCEVOY, Kieran; MCGREGOR, Lorna. **Transitional justice from below: Grassroots activism and the struggle for change.** Oxford: Bloomsbury Publishing, 2008. ISBN 978-1-841-13821-3

MCCONNACHIE, Kirsten. Truth Commissions and NGOs: The Essential Relationship. **Occasional Paper Series.** [Online] New York: The International Center for Transitional Justice/Ghana Center for Democratic Development (2004) [Accessed 25 Feb. 2018].

MCCORQUODALE, Robert – **The individual and the international legal system.** In **International Law.** New York: Oxford University, 2003. ISBN 9780199654673.

MEHL, Gustavo – **EBC: Justiça Global denunciara Brasil na OEA e na ONU se o PNDH for revisto, Justiça Global.** [Online]. (2010) Brasilia: Justiça Global. [Accessed 4 Apr. 2018], available from WWW: <URL:<http://www.global.org.br/blog/ebc-justica-global-denunciara-brasil-na-oea-e-na-onu-se-pndh-for-revisto/>>.

MENDELOFF, David – Truth-seeking, truth-telling, and postconflict peacebuilding: Curb the enthusiasm?. **International Studies Review.** [Online] 6:3 (2004), p. 355-380. [Accessed 25 Feb. 2018] Available from WWW:<URL: <https://doi.org/10.1111/j.1521-9488.2004.00421.x>>.

MENDEZ, Juan E.; MARIEZCURRENA, Javier – Unspeakable truths. **The Johns Hopkins University Press.** [Online] 25:1 (2003), p.237-256. [Accessed 25 Feb. 2018] Available from WWW:<URL: <https://muse.jhu.edu/article/38768>>. ISSN 1085-794X.

MEZAROBBA, Glenda – **O preço do esquecimento: as reparações pagas às vítimas do regime militar (uma comparação entre Brasil, Argentina e Chile).** [Online] São Paulo: Universidade de São Paulo, (2008). [Accessed 25 Apr. 2018] Available from WWW:<URL: <http://www.funag.gov.br/ipri/btd/index.php/9-teses/1020-o-preco-do-esquecimento-as-reparacoes-pagas-as-vitimas-do-regime-militar-uma-comparacao-entre-brasil-argentina-e-chile>>.

MEZAROBBA, Glenda – **Um acerto de contas com o futuro: a anistia e suas conseqüências, um estudo do caso brasileiro.** São Paulo: Editora Humanitas, 2007. ISBN 85-7732-009-X.

MIGOWSKI, Ana – **The Brazilian National Truth Commission in the Context of Latin America: Local, National, and Global perspectives.**

[Online] Hannover: Wordpress [Accessed 30 May 2018]. Available from: < URL: <https://brtruthcommission.wordpress.com>>.

NADLER, Arie; MALLOY, Thomas; FISHER, Jeffrey D. – **The social psychology of intergroup reconciliation**. New York: Oxford University Press, 2008. ISBN 978-0-195-30031-4.

NAGY, Rosemary – Transitional Justice as Global Project: critical reflections. **Third World Quarterly**. [Online]. 29:2 (2008), p. 275-289. [Accessed 17 Feb. 2018] Available from WWW:<URL: <https://doi.org/10.1080/01436590701806848>>.

NEIER, Aryeh – What should be done about the guilty?. In **Transitional Justice: how emerging democracies reckon with former regimes**. [Online] Washington: United States Institute of Peace Press, 2004. p. 172-183. [Accessed 30 Jan. 2018]. Available from WWW:<URL: [https://books.google.pt/books?id=EvD6oBQZdGEC&lpg=PA172&ots=zO1n4Pjh9W&dq=What Should Be Done About the Guilty%3F Aryeh Never&hl=pt-PT&pg=PP1 - v=onepage&q=What Should Be Done About the Guilty? Aryeh Never&f=false](https://books.google.pt/books?id=EvD6oBQZdGEC&lpg=PA172&ots=zO1n4Pjh9W&dq=What%20Should%20Be%20Done%20About%20the%20Guilty%3F%20Aryeh%20Never&hl=pt-PT&pg=PP1-v=onepage&q=What%20Should%20Be%20Done%20About%20the%20Guilty%3F%20Aryeh%20Never&f=false)>. ISBN 878379-43-7.

OHCHR – **Rule of Law Tools for Post Conflict States Vetting: an operational framework**. [Online]. New York: United Nations (2006). [Accessed 30 May 2018]. Available from: < URL: <https://www.un.org/ruleoflaw/files/RuleoflawVettingen.pdf> >.

OLSEN, Tricia D., PAYNE, Leigh A., REITER, Andrew G., **Transitional Justice in Balance: Comparing Processes, Weighing Efficacy**. New York: United States Institute of Peace, 2011. ISBN 978-1601270535.

PAIGE, Arthur – How “Transitions” Reshaped Human Rights: A Coceptual History of Transitional Justice. **Human Rights Quaterly**. [Online]. 31:2 (2009), p. 321-367. [Accessed 15 Feb. 2018] Available from WWW:<[URL:http://paigearthur.com/sites/default/files/Arthur_How%20Tra nsitions%20Reshaped%20Human%20Rights_2009.pdf](http://paigearthur.com/sites/default/files/Arthur_How%20Tra nsitions%20Reshaped%20Human%20Rights_2009.pdf)>. ISSN 1085-794X.

PARKER, Phyllis R. – **1964: O papel dos Estados Unidos no golpe de estado de 31 de março**. Rio de Janeiro: Civilização brasileira, 1977. ISBN 656918797.

PATHAK, Bishnu. A Comparative Study of World's Truth Commissions— From Madness to Hope. **World Journal of Social Science Research**. [Online]. 4:3 (2017), p. 192-230. [Accessed 28 Feb. 2018]. Available from WWW:<[URL: http://dx.doi.org/10.22158/wjssr.v4n3p192](http://dx.doi.org/10.22158/wjssr.v4n3p192)>. ISSN 2332-5534.

PAULO, Brazil Archdiocese of São – **Torture in Brazil: A Shocking Report on the Pervasive Use of Torture by Brazilian Military Governments, 1964-1979, Secretly Prepared by the Archiodese of São Paulo**. Texas: University of Texas Press, 1998. ISBN 978-0292704848.

POLITICA ATUAL – De joelhos manifestantes clamam por intervenção no Brasil [Online]. Alagoas: Politica Atual (2018). [Accessed 27 May. 2018]. Available from:<[URL:https://www.politicaatual.com/de-joelhos-manifestantes-clamam-por-intervencao-no-brasil-veja-a-materia](https://www.politicaatual.com/de-joelhos-manifestantes-clamam-por-intervencao-no-brasil-veja-a-materia)>.

POPKIN, Margaret; ROHT-ARRIAZA, Naomi – Truth as justice: Investigatory commissions in Latin America. **Law & social inquiry**. [Online] (1995) [Accessed 27 May. 2018]. Available from:<[URL:https://repository.uchastings.edu/faculty_scholarship/1175](https://repository.uchastings.edu/faculty_scholarship/1175)>.

REIS FILHO, Daniel Aarão – **Ditadura militar, esquerdas e sociedade**. São Paulo:Zahar, 2000. ISBN 8571105588.

Resolução no 2, de 20 de Agosto de 2012. [Online]. Brasília: Diário Oficial da União. [Accessed 30 Mar. 2018]. Available from WWW:<URL:<http://www.planalto.gov.br>>.

ROTBURG, Robert I.; THOMPSON, Dennis. – **Truth v. justice: The morality of truth commissions**. New Jersey: Princeton University Press, 2000. ISBN 978-1-4008-3203-3

SANTOS, Sheila Cristina – **A Comissão Especial sobre Mortos e Desaparecidos Políticos e a reparação do Estado às vítimas da ditadura militar no Brasil**. [Online] São Paulo: Pontifícia Universidade Católica de São Paulo (2008). [Accessed 25 Apr. 2018] Available from WWW:<URL: <https://tede2.pucsp.br/handle/handle/3911>>.

SARKIN, Jeremy – The necessity and challenges of establishing a truth and reconciliation commission in Rwanda. **Human Rights Quarterly**. [Online] 21:3 (1999), p. 767-823. [Accessed 26 Feb. 2018] Available from WWW:<URL:https://www.jstor.org/stable/762673?seq=1#page_scan_tab_contents>.

SCHABAS, William – The relationship between truth commissions and international courts: The case of Sierra Leone. **Human Rights Quarterly**. [Online] 25:4 (2003), p. 1035-1066 [Accessed 19 Feb. 2018] Available from WWW:<URL: <https://muse.jhu.edu/article/48349>>. ISSN 1085-794X.

SCHMITTER, Phillippe C.; O'DONNELL, Guilherme; WHITEHEAD Laurence – **Transitions from Authoritarian Rule: Latin America**. Maryland: Johns Hopkins University Press, 1986. ISBN 978-0-801-83188-1

SCHNEIDER, Nina – Breaking the 'silence' of the military regime: New politics of memory in Brazil. **Bulletin of Latin American Research**. [Online] 30:2, p. 198-212 (2011). [Accessed 16 May 2018] Available from WWW:< [URL:https://dx.doi.org/10.1111/j.1470-9856.2010.00448.x](https://dx.doi.org/10.1111/j.1470-9856.2010.00448.x)>. ISSN 0261-3050.

SCHNEIDER, Nina; DE ALMEIDA, Gisele Lecker – The Brazilian National Truth Commission (2012–2014) as a State-Commissioned History Project. In **The Palgrave Handbook of State-Sponsored History After 1945**. London: Palgrave Macmillan, 2018. ISBN 978-1-349-95305-9

SCHNEIDER, Nina – Truth No More? The Struggle over the National Truth Commission in Brazil. **Iberoamericana**. [Online] 11:42 (2011), p. 164-170. [Accessed 16 Feb. 2018] Available from WWW:<[URL:http://www.jstor.org/stable/41677374](http://www.jstor.org/stable/41677374)>.

SCHOULTZ, Lars – **National Security and United States Policy Towards Latin America**. New Jersey: Princeton University, 1986. ISBN 0-691-02267-4.

SIEDER, Rachel – **Guatemala after the peace accords**. London: University of London, 1999. ISBN 9781900039260.

SIKKINK, Kathryn; LUTZ, Ellen – The justice cascade: the evolution and impact of foreign human rights trials in Latin America. In: **International Law**

and Society. Oxon:Routledge, 2017. ISBN 978-0-754-62611-4. p. 333-339.

SKAAR, Elin; GARCÍA-GODOS, Jemima; COLLINS, Cath – **Transitional justice in Latin America: the uneven road from impunity towards accountability.** Oxon: Routledge, 2016. ISBN 978-1-138-85324-9.

SKIDMORE, Thomas E.; SILVA, Mário Salviano – **Brasil: de castelo a Tancredo, 1964-1985.** Rio de Janeiro: Paz e Terra, 1988. ISBN 978-8521903161

STAHN, Carsten – Accommodating individual criminal responsibility and national reconciliation: the UN Truth Commission for East Timor. **American Journal of International Law.** [Online] 94:4 (2001), p. 952-966. [Accessed 26 Feb. 2018] Available from WWW:<URL: <https://doi.org/10.2307/2674655>>.

STEPAN, Alfred C – **The military in politics: changing patterns in Brazil.** New Jersey: Princeton University Press, 1971. ISBN 978140086870

SUBOTIĆ, Jelena – The transformation of international transitional justice advocacy. **International Journal of Transitional Justice.** [Online] 6:1 (2012), p.106-125, [Accessed 26 Feb. 2018] Available from WWW:<URL:<https://doi.org/10.1093/ijtj/ijr036>>.

TEITEL, Ruti G. – **Globalizing Transitional Justice: Contemporary essays.** New York: Oxford, 2015. ISBN 978-0-19-022137-9

THE INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE – **What is Transitional Justice?** [Online]. New York: ICTJ. [Accessed 15 Jan. 2018] Available from WWW:<[URL:https://www.ictj.org/about/transitional-justice](https://www.ictj.org/about/transitional-justice)>

TORELLY, Marcelo Dalmas – **Justiça transicional e estado constitucional de direito: Perspectiva teórico-comparativa e análise do caso brasileiro.** Master Thesis in Law. [Online] Brasília:Universidade de Brasília (2010) [Accessed 28 May. 2018] Available from WWW:<[URL:http://repositorio.unb.br/handle/10482/8599](http://repositorio.unb.br/handle/10482/8599)>.

UNDP – **Vetting Public Employees in Post-Conflict Settings: Operational Guidelines.**[Online]. New York: United Nations (2006). [Accessed 30 May 2018]. Available from: < URL: <https://www.ictj.org/sites/default/files/ICTJ-UNDP-Global-Vetting-Operational-Guidelines-2006-English.pdf> >.

USAMI, Makoto – Defining Truth Commission. **Research & Reviews: Journal of Social Sciences** [Online]. 2:1 (2016), p. 56-61. [Accessed 15 Dec. 2017] Available from WWW: <[URL:https://ssrn.com/abstract=2805792](https://ssrn.com/abstract=2805792)>. ISSN 2322-0139.

VAN ZYL, Paul – Dilemmas of transitional justice: The case of South Africa's Truth and Reconciliation Commission. **Journal of international Affairs.** [Online] 52:2 (1999). [Accessed 28 Feb. 2018] Available from WWW:<[URL:http://center.theparentscircle.org/images/d96de38c44bc4080be6d8ffe2a172ccc.pdf](http://center.theparentscircle.org/images/d96de38c44bc4080be6d8ffe2a172ccc.pdf)>

VASALLO, Mark – Truth and Reconciliation Commissions: General Considerations and a Critical Comparison of the Commissions of Chile and El Salvador. **The University of Miami Inter-American Law Review.**

[Online]. 33:1 (2002), p.153-182. [Accessed 25 Feb. 2018] Available from WWW:<URL: <http://www.jstor.org/stable/40176564>>.

WEICHERT, Marlon Alberto – O relatório da Comissão Nacional da Verdade: conquistas e desafios. **Projeto História: Revista do Programa de Estudos Pós-Graduados de História.**[Online] São Paulo: PUCSP. 50:1 (2014), 2015 [Accessed 22 May 2018] Available from WWW: <URL:<https://revistas.pucsp.br/index.php/revph/article/view/24040>>

WESCHLER, Lawrence. – **A miracle, a universe: Settling accounts with torturers.** Chicago:University of Chicago Press, 1990. ISBN 978-0226893945

WESTHROP, Amy Jo; GUERNICHARO, Luciana Peluzio; SIMI, Gustavo – **Comissão Nacional da Verdade: balanços e perspectivas da finalização de seu processo político institucional. V Relatório de Monitoramento.** [Online] Rio de Janeiro: Instituto de Estudos da Religião, 2015 [Accessed 19 May 2018] Available from WWW: <URL:<http://www.iser.org.br/site/wp-content/uploads/2017/05/asrecomendacoesCNV.pdf>>

WIEBELHAUS-BRAHM, Eric – **Truth commissions and transitional societies: The impact on human rights and democracy.** Oxon: Routledge, 2010. ISBN 978-0415553223.

WIEBELHAUS-BRAHM, Eric – **Uncovering the truth: Examining truth commission success and impact. International Studies Perspectives** [Online]. 8:1 (2007), p.16-35. [Accessed 20 Feb. 2018] Available from WWW:<URL:<https://academic.oup.com/isp/article-abstract/8/1/16/1813141?redirectedFrom=fulltext>>

WIEBELHAUS-BRAHM, Eric – **What is a Truth Commission and Why Does it Matter? Peace and Conflict Review**. [Online]. 3:2 (2009), p.1-14. [Accessed 19 Feb. 2018] Available from WWW: <URL:<https://ssrn.com/abstract=1611719>>

WILCOX, Luke. Reshaping Civil Society through a Truth Commission: Human Rights in Morocco's Process of Political Reform. **International Journal of Transitional Justice**. [Online]. 3:1 (2009), p. 49-68. [Accessed 22 Feb. 2018] Available from WWW:<URL: <https://doi.org/10.1093/ijtj/ijn043>>

YOUNG, Laura A.; PARK, Rosalyn. Engaging Diasporas in Truth Commissions: Lessons from the Liberia Truth and Reconciliation Commission Diaspora Project. **International Journal of Transitional Justice**. [Online]. 3:3 (2009), p. 341-361. [Accessed 21 Feb. 2018] Available from WWW:<URL: <https://doi.org/10.1093/ijtj/ijp021>>