



**BRAZILIAN AMNESTY COMMISSION:
Policies of Reparation, Truth and Memory**

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Abstract:

This article deals with reparation, truth and memory policies promoted by the Brazilian Amnesty Commission and one of its projects. Regarding this, it will reflect on Brazilian military dictatorship through the transitional justice perspective. However, the paper's aim does not focus on evaluation of those policies; instead it plans to expose the debate, looking for the policy justifications and principal critiques. Therefore, I do not aspire to promote one point of view, pro or contra the policies, but prefer to discuss the mechanisms of public politics that are associated with them.

This investigation will be done - first - by contextualization, in order to understand the context and actors related to the Brazilian Military Dictatorship; then, by the transitional justice theory to turn to the policies of Amnesty Commission. Lastly, it will sum the points in conclusion.

Keywords:

Transitional Justice, Human Rights, Reparation, Truth and Memory

I. - CONTEXTUALIZATION

During the second half of the last century, Brazil - as many Latin American countries - was governed by military dictatorship. On the 31st of March 1964, the Brazilian militaries performed a *coup d'état* which overthrew the democratically elected government. On this day the Brazilian dictatorship got started and it ran the country for more than 20 years.

The opposition to the new government was made by several political groupings and faced severe repression promoted by the military dictatorship. In order to control and eliminate regime opponents, repression mechanisms - such as arbitrary prison, torture and the disappearing of Brazilian citizens - was enforced. The repression's peak mainly

occurred in the administration of general president Emilio Medici, under the authorization of Institutional Act number Five¹. This Institutional Act closed the National Congress, suspended Constitutional guarantees, such as habeas corpus, and compelled preliminary censorship of music, films, theater plays and television shows (if they were understood as subverting the political and moral values).

The Military regime was in power until 1988, when the actual Federal Constitution was enacted to guarantee the regime's death by control over the executive power by the legislature. During the 1990s and early the 2000s, under pressure of many civil society groups, human rights organizations and political leaders, laws were created to recognize state responsibility for the crimes against citizens. A research affirms that 50 thousand people had been in jail during the dictatorship, 10 thousand were exiled, 20 thousand have been tortured, and nearly 5 hundred (exactly 474) were killed or disappeared (Chiavenato: 1997)².

II. - TRANSITIONAL JUSTICE THEORY

The framework of the analysis is usually understood as Transitional Justice so long as the process that Brazil - together with some other South American countries - passes through refers to a change from an authoritarian form of government to a more democratic one. Louis Bickford draws an interesting concept of transitional justice in the Macmillan Encyclopedia of Genocide and Crimes against the Humanity:

“Transitional justice refers to a field of activity and inquiry focused on how societies address legacies of past human rights abuses, mass atrocity, or other forms of severe social trauma, including genocide or civil war, in order to build a more democratic, just, or peaceful future” (Macmillan 2004: 1045).

Transitional justice paradigm is formed by two linked key concepts: Transition and justice. In order to provide a deeper reflection about transitional justice studies, I seek to delimitate the focus and objectives, and analyze each of these concepts separately.

The first key concept to be reflected on is transition. It refers to a state alteration departing from one way of conducting the public sphere to another, usually driven by a major political transformation. This political transformation would change the actual regime, decreasing the repressive and authoritarian acts to a more stable and peaceful configuration (ibid).

The concept of justice in the transitional justice theory is understood as the punishment process to the ones that have used state power to promote illegitimate acts against citizens. Nevertheless, the key concept of justice needs to be used in a broader sense, not only limited in the punitive perspective, but, as well, in the necessity of reparations programs and truth/memory mechanisms (ibid).

¹ The Institutional Act No. 5, or simply AI 5, which came into force on 13 December 1968, was the most authoritative of all the institutional acts. It strengthened the discretion powers of the military regime. The Act was in force until 31 of December of 1978. In total the military regime promulgated 17 Institutional Acts. The AI 5 can be found on:

<http://www.unificado.com.br/calendario/12/ai5.htm> [Accessed on January 24th, 2010].

² The official documents on the missing and dead people during the military period can be found in MINISTÉRIO DA JUSTIÇA - BRAZIL. Direito a Verdade e Memória. Comissão Especial sobre Mortos e Desaparecidos, 2007.

According to Lean's words, transitional justice reflects about the "dilemma of how promote national reconciliation after periods of systematic and severe human rights abuses" (2003: 170). Many strategies can be implemented in order to promote this reconciliation; once more Macmillan is precise in denominating the most common ones:

"This generally involves a combination of complementary judicial and nonjudicial strategies, such as prosecuting perpetrators; establishing truth commission and other forms of investigation about the past; forging efforts toward reconciliation in fractured societies; developing reparations packages for those most affected by the violence or abuse; memorializing and remembering victims; and reforming a wide spectrum of abusive state institutions (such as security services, police, or military) in an attempt to prevent future violations" (Macmillan 2004: 1045).

Furthermore, commonly the state that promoted or allowed those authoritarian acts is one of the actors promoting these transitional justice strategies and usually does it creating institutions, - permanently or temporary - which have the competence of dealing with the past abuse. More specifically in Brazil two of these commissions were created and will be analyzed in the next section.

III. - BRAZILIAN AMNESTY COMMISSION

This section intends to examine, focusing on one of the Brazilian Commissions, how Brazil deals with the military dictatorship. This analysis will be done through the use of the transitional justice theory in two perspectives: politics of reparations and politics of truth and memory.

1.- Politics of Reparation

Two Commissions are responsible for the reparation process of citizens damaged by the military dictatorship: *Commission of the Disappeared and Missing Persons* and *Amnesty Commission*. Both Commissions form a part of the Federal Government; and each of them has a specific competence: *Commission of Disappeared and Missing People* has the competence of finding, proving, and decreeing the death of people during the military period, as well as promoting reparation for the families³. The other Commission - *Amnesty Commission* - has the competence to deal with the cases of personal political persecution during the military period, providing the political amnesty status and, in some cases, fixing economical reparation. For the applicant to receive the declaration of political amnesty with reparation, he/she must fit the 17 categories imposed by the article 2º of the federal law 10.559/02⁴.

Amnesty Commission is structured as a part of the federal bureaucracy under the Competence of Ministry of Justice and it is configured as an administrative tribunal with a similar structure of a regular judicial court. However, the authority to grant the amnesty status is not given by judges, but by the Justice Minister, with the support of

³ *The Disappeared and Missing People Commission* is not in the focus of this work. This Commission was mentioned to show the existence of another Commission that works with reparation policies, in this case, for the families.

⁴ Federal Law 10.559 was promulgated in November 13th, 2002. Legislation cab can be found in <http://www3.dataprev.gov.br/SISLEX/paginas/42/2002/10559.htm> [Accessed on January 23rd, 2010].

twenty specialists in the matter, chosen by the Justice Minister⁵. These specialists give their judgment on every political amnesty request, granting or not the amnesty status and reparation. In general, the Justice Minister confirms the specialists' judgments, promoting the benefits suggested, but the Minister is allowed to provide another decision.

According to the federal law 10.559/02, there are two forms of reparation: First - Unique Payment - happens in the cases when the applicant proves political persecution, but does not prove the loss of labor activeness⁶. In these cases, the claimants will be granted with economic reparation of thirty minimum wages⁷ on the date of persecution⁸. However, the article 4° subsection 2 affirms that in "any case the amount of economic compensation in will exceed R\$ 100,000.00 (one hundred thousand reais)⁹. So it can be seen, that after 7 years of persecution, when the case of the Unique Payment is decided in favor of the claimant, he/she will 'enrich' the limits of the economical benefits.

The other form of economical compensation - Mensal Payment - happens in the cases when the applicant proves political persecution and the loss of labor activity during the period of persecution¹⁰. In these cases, the claimant will be granted with economic reparation in the wage of the lost job for every lost month¹¹. However, Mensal Payment as economical compensation has no legal restriction, regarding the amount of money that the beneficiary could receive.

The two most used arguments to justify the importance of promoting reparations policies to damaged citizens are: firstly, that the harm inflicted to the victims should receive some form of reparation - it refers to the general notion of justice that reflects morality, sympathy and/or solidarity. (Rombouts 2004: 21). In this sense, it reinforces the basic concept of justice, connecting the damaged and their compensation.

Another argument which justifies reparation policies is the use of the tools to reconciliation that bridge the gap between an individual and the community, promoting to harmed citizens the sense of belonging to the society (Hamber 2005: 141). In this sense, acting in the prevention of revenge without a forced imposition of forgiveness, reconciling citizen and the past, "reparation, already paid in some of the Latin American cases (...) are important alternative mechanism for promoting reconciliation" (Lean 2003: 171).

In both arguments, the effectiveness of reparation policies - as an instrument of transitional justice - is settled in the state responsibility to accept and recognize the

⁵ These specialists give their judgment about the case and the Justice Minister confirms or not the Amnesty Status.

⁶ Federal Law 10.559/02, Article 4°.

⁷ Brazil has the minimum wage that a person must receive per month of working. This amount of money is precisely R\$ 510 Reais (around 190 euro), so the applicant would receive RS 15300 Reais (around 5650 euro) for every year of persecution.

⁸ Federal Law 10.559/02, Article 4°.

⁹ That amount of money would be around \$37000 (thirty seven thousand euro).

¹⁰ Federal Law 10.559/02, Article 5°.

¹¹ Federal Law 10.559/02, Article 6°. In the Article 6° sub-articles 1, 2, 3, 4, 5, 6, it is possible to find the rules that help to define which job the applicant had and how much would be his/her actual wage today. Although it is an important component of the total amount of the monetary reparation, the focus of this work will be on the total result of this reparation.

persecuted status of the victims. The victims' status can show the government's attitude towards the well being of the citizens and lead to increasing of the level of civil trust to the state recognition of its mistakes (Hamber 2005: 141).

However, reparation cannot be analyzed without taking into account a complex process that is not reduced only to the delivering of a certain status or economical compensation. The designed policies need to reach the subject and, at the same time, need to be legitimated by their harm. The arguments for reparation policies can lose legitimacy if the balance between values or damage/compensation becomes disproportional.

The author sees two imperfections in the federal law 10.559/02 that could promote disproportional reparation and, consequently, stimulate critiques. The initial one is founded in the very existence of the two forms of reparation - Unique Payment and Mensal Payment. The reparation policy adopted by the federal law 10.559/02 should center at the moral price that the citizens paid for their suffering and should not be measured by economical standards. The loss of a job could be a component of the harm, but, in any sense, it could be considered more relevant to regard physical and moral suffering. For instance, a person that did not lose his/her job could never receive higher monetary reparation¹².

Another imperfection promoted by the federal law 10.559/02 is the lack of monetary limitation in the Mensal Payment benefit that could lead to disproportional economical reparation. In these cases, community could see certain compensations as too high for the reparation for damage¹³ and the process of reconciliation, bringing back the harmed person to the society and citizenship could not happen. A disproportional compensation could promote the arguments that the damaged citizens are stealing public money and, in extreme cases, could raise critiques of illegitimate reparation - lowering or even denying the suffering of the oppressed.

The imperfection of the federal law 10.559/02, regarding the economic reparation, has promoted a depreciation of the *Amnesty Commission's* work and the institute of reparation itself. The critiques that should be addressed to legislation failure commonly fall over recognizing the damaged citizens as victims and, instead of increasing the level of civil trust as argued by Hamber (2005), promote institutional depreciation.

¹² A person that proves a political persecution by the regime with no physical harm, but with a loss of a job, is entitled to receive a Mensal Payment. If the Mensal Payment is 1000 reais (for less than nine years), the claimant would receive higher monetary reparation than any person in jail who could not prove the loss of labor activity.

¹³ As exemple, the reparation of two very important Brazilian journalists - Ziraldo and Jaguar - were very criticized by the public opinion. Both received more than one millions reais (around 370 thousand euros) as retroactive (paid by the time that the applicant was waiting for the case be judged) and, moreover, a Mensal Payment of R\$ 4.375 reais (around 1620 euros). This reparation was granted by the *Amnesty Commission* in accordance with the federal law 10559/02. Critics related with the case can be found in: http://oglobo.globo.com/pais/noblat/post.asp?t=repudio_as_imorais_indenizacoes_de_ziraldo_jaguar&cod_Post=96601&a=111. More information related with the case can be founded in http://oglobo.globo.com/pais/mat/2008/04/04/anistia_ziraldo_jaguar_vao_receber_indenizacao_pensao_mensal-426702935.asp [Accessed January 24th, 2010].

2.- Policies of Truth and Memory

From the transitional justice perspective, the work of the *Amnesty Commission* not only promotes policies of reparation, but, as well, encourages policies of truth and memory. In order to understand the mechanisms that the *Amnesty Commission* has been promoting, and the policies of truth and memory employed it seems interesting to expose how the decision of granting amnesty and benefits is taken. Additionally, one should also take a look at the *Amnesty Commission's* projects called *Amnesty Caravans*.

Every request of political amnesty addressed to the *Amnesty Commission* goes to an administrative court where the specialist proposes a decision for the Justice Minister. Those trials are open to general public and recorded. Every applicant, even though having already given a written description of his/her case inside the amnesty process, is invited to talk for ten minutes. At this moment, the claimants can re-explain what they have passed through, expose or contradict facts and even show new evidentiary documents. Those trial sessions usually take place inside the Ministry of Justice, in Brasilia, the capital of Brazil.

Because of the size of Brazil, the remoteness of the capital, consequently, the possibility to get in contact with the amnesty trial was – not only for the applicants, but to general public, as well, – quite difficult. Being aware of this reality, the *Amnesty Commission* created a project that consists of moving the trial sessions to different Brazilian cities, usually closer to the applicants' places or facts under investigation. This project is denominated *Amnesty Caravan*¹⁴ and commonly has a theme¹⁵. The *Amnesty Caravan* is an open and recorded event to which all the representatives of the community is invited. It may last for one or more days. Normally it is divided in two parts: first, the *Memory Session* where a short film, produced by the *Amnesty Commission*, explains how the Commission works and connects the theme, period and applicants. The *Memory Session* can be followed by a debate related to the topic. After that, the administrative judgment session takes place when not only the individual history examined in the process is shared with the audience, but, as well, the applicants are invited to relate different aspects about them to the past.

The opportunity that is given to the applicant to exposing his/her experience in the military period not only in the written form of the amnesty process, but orally during the amnesty trials, as well, measures the truth. As we can see, “[t]aking testimony inevitably raises expectation that something will happen as a result – that those responsible will be identified and possibly punished; that victims and their relatives will be compensated or that, at a minimum, the truth about what happened will be publicly disclosed” (Popkin and Roht-Arrisza 1995: 100). Consequently, when the *Amnesty Commission* takes the applicant's written and oral testimony, this institution is building in – testimony by testimony – the pieces of a big puzzle into disclosure of the Truth.

¹⁴ The *Amnesty Commission* was formed in 2002, but the *Amnesty Caravan* project was only created in 2008. The Amnesty exists since 1988 established by the new Constitution (article 8º of the Constitutional Transitory Acts) to decide on benefits for the Military Dictatorship damaged citizens. However, before the competence of granting the amnesty status was not practiced in all the State Ministries.

¹⁵ Usual themes are related with historical moments or categories; I bring two of them as an example. One is the *Amnesty Caravan* of the Brazilian Banned, the other is the *Amnesty Caravan* related to the deposition of the ex-president João Goulart – Jango.

The *Amnesty Caravan*, facilitating the presence of the applicant in the trial, has the potential to even increase the chances to learn the truth.

Not only policies of truth have been promoted by the *Amnesty Commission*, but policies of memory have been constructed, too, especially by the *Amnesty Caravans* project. This happened because the very structure of the *Amnesty Caravan* has, as one of its aims, the reconstructing of memory. As it can be seen, “remembering all events and situations is impossible. Human beings apply categories, classification, values and norms which select events and facts. We forget to remember...” (Czarnota 2001: 124). The Caravan theme, using relevant fact of the period, can bring to the past back to memory of the local population involved in the trial, of the citizens that were not directly damaged by the Military Regime, but certainly were very close to it.

Contributing to this process, the administrative judgment session - when not only life history is shared with the audience, but the applicant’s oral version, the feelings, probably experienced by some of the audience are, as well, - can become an instrument of creating not only individual, but collective memory through participation of the public in the event¹⁶.

As Adam Czarnota points out, “dealing with collective memories may require new ways of institutionalizing forgetting and remembering” (ibid: 125) and, as it can be seen, the *Amnesty Commission* - as a State institution - have been promoting together with policies of truth the policies of memory, especially by its *Amnesty Caravans* project. However, there is no clear link between policies of transitional truth and the process of democratization (Brito et al. 2001: 34), in this sense, policies of memory can not guarantee an undemocratic break. As Brito et al. argue, “the answer will differ also according to the level of popular participation and interest in the process” (ibid: 35), and the characteristics that the *Amnesty Caravan* has.

IV.- CONCLUSION

It is maybe impossible to conclude with something more than the argument that the policies of reparation and truth/memory promoted by the *Amnesty Commission* have an undefined future. Those mechanisms and forms of execution are too new to affirm in what extent they can contribute to consolidation of democracy.

This does not exclude, however, the critical analysis of the federal law 10.559/02 which may find legislative imperfections, or concludes that those deficiencies can be difficult and even an obstacle to the final aims of those policies. The disproportion of giving more value to economical loss than to citizens’ suffering or the disproportion between damage and reparation, promoted by the legislation, can maintain or even intensify the conflicts in the civil society.

On the other hand, it is possible to affirm that the *Amnesty Caravans* project can - by the policies of truth and memory - bring back to the public debate the military dictatorship issue. Unfortunately, if this debate will succeed to create a more

¹⁶ The audience participation of the *Amnesty Caravan* can vary in number depending of the event, but as an example, the *Caravan* that gave the amnesty to the deposed president Jango took place in the middle of the national lawyers meeting with participation of around 3000 lawyers.

democratic Brazilian state or not depends on innumerable factors which are difficult to measure, not only because the project has been taking place for too little time, but because the legislation critiques can be extended to the project and uncover the negative vision of it.

Nevertheless, the paper reflects on this process through the transitional justice perspective to study the evolved issues, especially the harm of citizens that seems to be the most accurate form of evaluating the discussed policies. Hopefully, those instruments will assist Brazil to prevent future dictatorships, helping to build up a more peaceful society.

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