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Chapter 5

Brazil

The tortuous path to truth and justice

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Brazil's National Truth Commission, inaugurated in May 2012 by Brazil's first female president, Dilma Rousseff, published its final report in December 2014. The Commission addressed a concentrated period of state violence during two decades of authoritarian military rule, from 1964 to 1985, although its mandate included human rights violations committed over the course of four decades (1946 to 1988). While other, more limited commissions had initiated Brazil's truth-seeking process in the mid-1990s, the full-scale National Truth Commission was not launched until nearly a quarter-century after the end of the dictatorship – a notably late start compared to truth commissions in other countries of the region.

Among the countries considered in this book, Brazil is the largest in both territory and population: around 202 million in 2015, making it the world's fifth most populous country. In comparison to the rest of the region, Brazil suffered a relatively low number of fatalities linked to dictatorship-era repression. The National Truth Commission certified 434 deaths or disappearances for the entire dictatorship period, just slightly more than in each of the much less populous countries of Uruguay and Paraguay. However, like those two countries, Brazil suffered a very high incidence of non-fatal torture. This raises the question of why Brazil, chronologically the third country in the region to reinstall democratic rule, nevertheless did not feel the need to launch an official truth commission until so recently. The answer, in part, is that Brazil never adopted a holistic transitional justice policy, such as those in other countries, that seemed to see truth as a first step. Instead, initial official transitional justice initiatives, when they came, focused almost entirely on compensatory or reparatory measures. On the whole, Brazil's transitional justice process to date can be characterised as reparations-driven.

Moreover, if we attempt to draw up a general balance sheet across the areas of truth, justice, and reparations, 30 years after the end of the dictatorship, it is clear that Brazil has yet to systematically address the human rights violations committed during military rule. The advances in reparations already noted were largely begun a decade after transition, under the social democratic government of Fernando Henrique Cardoso (1995–2003). There was also progress in the field of truth under the centre-left Labour governments of Luiz Inácio Lula da Silva

(2003–11) and Dilma Rousseff (2011–). The amnesty law of 1979 nonetheless remains largely unchallenged across the political spectrum, although it has come under specifically legal pressure in recent years.

This chapter analyses Brazil's process towards accountability for past human rights violations, highlighting the constraints imposed by the amnesty law and the delays in the search for truth. The chapter starts with some brief historical background on the authoritarian regime and the transition to democracy. Subsequent sections address amnesty, prosecutions, reparations, and the recently concluded Truth Commission before reaching general conclusions about the Brazilian path towards accountability.

Authoritarian rule and the transition to democracy

Following the 1964 coup d'état that deposed democratically elected President João Goulart, the Brazilian military became part of the Operation Condor network that operated across the Southern Cone (see Chapter 1). Following the precepts of the Cold War national security doctrine, the Brazilian military government used brutal violence to eliminate what it perceived to be internal left-wing subversion. Individuals and organisations on the left were singled out as targets; those deemed enemies of the state were persecuted and tortured; and some were forcibly disappeared. The main political parties were abolished soon after the coup. Student unions were suspended, and the principal labour unions, including the main trade union structure, Comando Geral dos Trabalhadores, were shut down, with hundreds more placed under government administration. In the first few months of authoritarian rule, approximately 10,000 civil servants were removed from their posts, and more than 40,000 people were placed under police investigation (Arns 1985, 61). The first decree issued by the military government after the coup, Institutional Act 1 of 1964, suspended political rights. Over the course of 21 years of dictatorship, an estimated 50,000 people were detained by the military government at one time or another (Gorender 1987, 235).

Two general features distinguished Brazilian authoritarian rule from some of the other authoritarian regimes established in Latin America during the same period. First, Brazil did not have one single dictator. Instead, there were five different presidents and one three-person military junta, during the period of authoritarian rule. The presidents were selected by an electoral college and ratified by the National Congress, giving an appearance of normality and of a civilian–military regime. The second feature was that during military rule the country's regular institutional framework was more or less maintained, although with many adjustments. The National Congress continued to function, although it was suspended a few times. This gave the regime some degree of legality and perhaps even a spurious legitimacy among certain sectors of society. Political participation was restricted, but the fact that elections were held for the National Congress allowed

space for a limited form of political expression that was not possible in other Latin American countries under military rule.

In December 1968, the dictatorship switched to a harder line, closing the National Congress in what became known as the 'coup within the coup'. Over the next ten years, during which time the right to *habeas corpus* was widely flouted, the torture of political prisoners became widespread. By 1974, it was known that at least 20 people previously under arrest by the repressive apparatus had disappeared (Arns 1985, 22). Other forms of persecution included loss of political party or union membership or, in the case of students, expulsion or exclusion from state and private secondary schools, colleges, and universities. Secret files were kept on many perceived regime opponents, of all classes and social backgrounds. Those who were the objects of such surveillance found themselves facing a range of difficulties in daily life, especially in the job market (Dallari n.d.). One estimate suggests that by the end of the 1970s, more than half a million people had suffered some form of politically motivated violation, ranging from imprisonment and torture to forcible disappearance, exile, removal from office, or arbitrary prosecution (UEE 1979).

The military government counted heavily on the support of the military justice system to stay in power. Military criminal, procedural, and organisational codes were deployed and/or modified to serve alongside a newly introduced National Security Law from 1969, as a legal basis for the irregularities and abuses practised by the military government. This battery of legal instruments regularised and gave new formal powers to the so-called security agencies, empowering them to arrest any person, redefining crimes against national security, and expanding the jurisdiction of the military justice system to include common crimes such as bank robberies (D'Araujo, Soares, and Castro 1994, 19). Capital punishment was reintroduced in 1969. It was never formally invoked, however: the regime resorted instead to summary execution or secret torture sessions as a method of killing opponents (Fausto 2000, 481).

Elite-controlled political transition

Political transition to democracy in Brazil was a gradual process.[1] It started after the military-appointed president, General Ernesto Geisel, assumed power in 1974 with a promise to initiate a policy of *distensão*, or easing of tension. The next president, General João Figueiredo, introduced an *abertura*, a more definite political opening geared towards redemocratisation. This lasted until 1985. Both periods allowed a certain degree of political liberalisation: political persecution gradually decreased, and political parties created by, and acceptable to, the regime began to operate. The Brazilian dictatorship ended without direct presidential elections. Tancredo Neves, the civilian successor to the last general in power, was chosen indirectly by an electoral college, but he died unexpectedly before taking office. His vice president-elect José Sarney, a former ally of the military, took over as president.

Brazil's slow and negotiated transition to democracy has been described as an agreement between elites. Some former exiles and victims of political persecution were gradually allowed to reclaim a place at the table alongside their more conservative peers, on condition that they abandoned any radical projects or plans. The military gradually withdrew from politics in exchange for civilian politicians' tacit acceptance that military intervention had been necessary. According to Sabadell and Mavilla, 'to shut the door on this period, there was to be a "reciprocal pardon", without any investigation into the violations, or even a humanitarian effort to provide the victims and their families with documentation so they could learn the truth about the events or recover the bodies of the people who died or disappeared' (2003, 108–9, my translation).

It was in this context of conservative, elite-controlled transition, beginning in 1974, that an amnesty law was passed in 1979. Compared to amnesties in neighbouring countries, the law enjoyed possibly unique levels of popular support. It did not come under challenge either during or after the transition, as the idea of amnesty or an amnesty law was understood at the time quite differently in Brazil than in the rest of the region. In Brazil, the law was enacted largely as a result of public pressure, a measure intended to benefit regime opponents and others who were being persecuted. Its initial aim was to facilitate the transition to democratic rule by allowing opponents of the regime to be released from prison and/or to fully re-enter national political and social life. The law was not, in other words, the brainchild of the regime, nor was it initially conceived as a way to benefit regime agents who had committed human rights violations. Lawyers, survivors, and victims' relatives pushed for it as a method to secure democratic freedom for the opposition. In practice, however, the military actively appropriated the amnesty law to preclude criminal prosecution of its own members, even for core atrocity crimes.

Amnesty

Amnesty has a long tradition in Brazilian history as a legal and political instrument. Immediately after the 1964 coup, intellectuals and public figures demanded amnesty for political prisoners and other citizens who had been stripped of their political rights by the military regime. Over the next decade, as the regime detained and imprisoned ever-larger numbers of people, the demand for amnesty to benefit political prisoners spread to broad sectors of the society. This became an important political issue, one that tested the limits of the regime.

In February 1978, the Brazilian Committee for Amnesty (Comitê Brasileiro pela Anistia, CBA), a civil society grouping, was founded to coordinate the push for amnesty. The CBA demanded the immediate pardon and release of all political prisoners and the politically persecuted. It also demanded the cessation of torture, the reinstatement or return to the country of those removed from office or exiled, the investigation of disappearance cases, and the revocation of the National Security Law. These demands, although couched in the language

of amnesty, pointedly did not include amnesty for those who had committed human rights violations. In other words, the popular call for amnesty did not imply support for granting impunity to public officials, regime agents, or dictators (CBA 1978). This version of the pro-amnesty movement gradually spread across the country and gained wide-ranging support, both within Brazil and abroad.[2]

In response to this increasingly vocal and popular demand, the National Congress passed the amnesty law (Law 6.683) in August 1979. The law granted amnesty to 'all of those who, in the period between 2 September 1961 and 15 August 1979, committed political crimes' (or 'related' crimes). The law, which makes no mention of torture, was phrased in an elliptical manner and did not provide a definition of political crimes. Those who were found guilty of what the dictatorship considered to be violent crimes (termed 'blood crimes') were excluded from amnesty. This provision, targeted at left-wing opponents of the regime, ruled out amnesty for 'terrorism', robbery, kidnapping, and assault. The amnesty did allow for the immediate release of political prisoners not convicted of the excluded crimes mentioned above. By October 1980, the last political prisoner – as defined by the regime – was set free. The law also provided for the reinstatement of some people previously dismissed or expelled from their jobs and for the return of exiles. Some years later, after transition, the democratic 1988 constitution appeared to reaffirm the amnesty law's validity: Art 8 of the Transitional Constitutional Measures Act (Ato das Disposições Constitucionais Transitórias) repeated the terms of the original law. Indeed, it established categories of survivors whose rights to promotion, pensions, and employment had been abrogated by the dictatorship for exclusively political reasons.

At the time of its enactment in 1979, the amnesty law represented an attempt to re-establish relations between the military and regime opponents, even those who had been removed from office, banished, imprisoned, or exiled. The law invoked notions of pacification and harmonisation of differences. It was seen, even by some regime opponents, as a way to overcome an impasse, thereby contributing to a future transition to democratic rule (Mezarobba 2006, 146–47). In practice, however, the legislation soon acquired implications far removed from those advocated by social movements and human rights defenders, who had not contemplated extending amnesty to the agents of repression. In effect, the regime was able to use support for the idea of amnesty for its own purposes.

In hindsight, then, it seems evident that the Brazilian state's habitual approach to dealing with the dictatorship legacy took shape as early as 1979, with the approval of the amnesty – a law that prioritised oblivion and the negation of truth. Since then, accountability for past crimes in Brazil has continued to be strongly influenced by this logic constructed during the dictatorship. Thus, the concept of amnesty is still widely perceived as valid. The main obstacle to accountability has been the specific manner in which the amnesty law has been interpreted since it came into force: as a guarantee of impunity for state agents who committed grave human rights violations. The next section discusses the implications of this

for advances in – or rather, stagnation of – attempted trials and prosecutions for crimes of the past.

Trials

Brazil's legal system is grounded in the civil law tradition. The country's federal political structure means it effectively has a dual system, with legal codes and legislation enacted primarily at the federal (central, national) level, but also by states and municipalities. The Federal Supreme Court (Supremo Tribunal Federal, STF) is the highest national court, responsible for safeguarding the constitution and functioning as a court of review. There is also a Superior Court of Justice (Superior Tribunal de Justiça), created by the 1988 constitution and charged with standardising the interpretation of federal laws and defending the rule of law.

The Public Prosecutor's Office (Ministério Público da União) is an autonomous body, working at both the federal and state levels. It is popularly known as 'the people's defender'. The office is responsible for bringing criminal cases to trial, but its responsibilities also include requesting the judge to acquit a defendant if the public prosecutor becomes convinced of his or her innocence. Although prosecutors are empowered by law to directly conduct criminal investigations, they do so only in major cases, usually involving alleged wrongdoing by police or public officials. They are also in charge of supervising police work and police investigations. In addition to their duties in criminal cases, Brazilian prosecutors are authorised by the constitution to take action against private individuals, commercial enterprises, or federal, state, or municipal authorities where such action is merited to protect minorities, the environment, or the population in general.

Lack of criminal accountability in domestic courts

When it first emerged in 1978, the civil society amnesty movement called for members of the Brazilian security forces to be held criminally responsible for atrocity crimes. Since the end of the dictatorship, however, this demand has gradually disappeared, even from the discourse of many victims' relatives. Very few criminal cases testing the limits of the amnesty appear to have been brought before the judiciary since the law was passed almost four decades ago. This limited history of attempts to pursue criminal justice is partly explained, I would argue, by the lack of faith that survivors and victims' families have in the legal system. However, it also reflects the military regime's success in persuading society to forget about human rights crimes and accept impunity for the perpetrators (Mezarobba 2008). Another, more specifically technical, factor is that serious crimes such as torture and homicide, those that are potentially at issue here, are considered 'crimes of public initiative'. This means that it is up to the Public Prosecutor's Office to initiate such cases and, until very recently, prosecutors failed to act upon or even acknowledge this duty. Private individuals, including victims and relatives, have very limited powers to challenge or attempt to rectify such inaction. Even if they do, their claims must be channelled through the Public Prosecutor's Office itself, which is free to decide whether or not their complaints have merit.

Despite this official inaction, the Brazilian state has been held legally responsible on a number of occasions for the imprisonment, torture, death, or disappearance of victims of political persecution. The first known successful case was in 1973, when eight military and two police officers were sentenced by a military court for torturing 14 soldiers, four of whom died as a result. The military justice system's investigation was initiated at the request of the army minister (Melo 1997, 8). In 1978, in the case of journalist Vladimir Herzog, who was murdered in 1975 while imprisoned in São Paulo, a judge found the state guilty of illegal arrest, of not ensuring the victim's physical and moral integrity, and of torture, requiring the prosecutor to investigate the criminal responsibilities of those involved. This set a precedent, and similar court rulings followed. Some recognised the civil liability of the state, but none assigned criminal responsibility to its agents.

The first reported application of the amnesty law to preclude punishment of alleged perpetrators of human rights violations was in the Superior Military Court (Superior Tribunal Militar, STM) in April 1980. A request was made for the prosecution and punishment of three individuals who, it was alleged, had four years earlier tortured and blinded a political prisoner, Milton Coelho de Carvalho. Although the violence against Carvalho was a matter of record and was recognised as proven in the original military court verdict and in the STM's own verdict, the military judge denied the claim. Hence, with the sole exception of the 1973 case mentioned above, no state agent, either civilian or military, has ever been punished for past crimes.

A very recent trend towards recognising, and attempting to address the criminal responsibility of agents of the military dictatorship period, therefore, represents a significant, although as yet incipient, change to this long history of denial and omission. It seems to reflect a growing awareness on the part of the Public Prosecutor's Office of its responsibilities towards the victims and their families, based on knowledge acquired mainly since the turn of the twenty-first century. The years 2008 and 2009 saw the first initiatives by the Federal Prosecution Service (Ministério Público Federal) to actively investigate the criminal responsibility of former public agents involved in gross human rights violations during the dictatorship. In this period, federal prosecutors initiated several criminal investigations to shed more light on past cases of abduction, disappearance, and murder or summary execution. Data from the end of 2013 indicated that, to that point, the Federal Prosecution Service had initiated almost 200 individual criminal investigations and filed six sets of criminal and/or civil charges involving 11 former agents of the dictatorship. Two of the attempts to file charges were rejected, while four remain under consideration in 2015.

The major domestic legal challenge to date against the general principle of amnesty – unrelated to a particular case – also occurred in 2008. A 'private' group of members of the legal profession, rather than public prosecutors per se, was responsible: the Brazilian Bar Association brought a legal challenge before the

Federal Supreme Court, arguing that continued amnesty for state agents who had committed gross human rights violations during the dictatorship violated 'fundamental constitutional precepts'. In its 2010 response, however, the STF highlighted the bilateral nature of the amnesty and claimed that it was a political settlement, outside the purview of the judicial branch to review.[3]

Turning to the inter-American system

In Brazil, as elsewhere in the region, the lack of response from domestic courts has led some victims to seek redress in the inter-American system. For instance, in 1982, several families filed a liability case in court against the Brazilian state, seeking to clarify the circumstances surrounding the deaths of members of the Araguaia guerrilla movement and the whereabouts of their remains. The Guerrilha do Araguaia was an armed offshoot of the Communist Party of Brazil, formed to resist the military regime. At the beginning of 1972 the group had approximately 70 fighters. The same year, army expeditions were sent to the Araguaia region to wipe out the group. By the end of 1974 their mission was complete: the group had been annihilated, and reports indicate that the bodies of the guerrilla fighters were subsequently exhumed and incinerated or thrown into rivers as part of an official cover-up.

After exhausting all available domestic remedies without achieving a satisfactory outcome in their case, the families appealed in 2001 to the Inter-American Commission on Human Rights (IACHR). The Commission referred the case to the Inter-American Court of Human Rights. In December 2010, the Court concluded that the provisions of the Brazilian amnesty law are not compatible with the American Convention on Human Rights and lack legal effect, thus rendering the law invalid as an obstacle to investigation of the facts and identification and punishment of those responsible. The judgment declared Brazil responsible for the forced disappearance of 62 people between 1972 and 1974, and ordered the state to carry out a criminal investigation of the facts and reveal the truth about the crimes.[4] The Court's October 2014 follow-up report on compliance with the judgment found that although certain aspects, including indemnification and official acknowledgement, had been implemented, the amnesty law was still being allowed to impede investigation and prosecution. The Court also criticised unnecessary delays and difficulties in the still-unsuccessful search for remains.[5] By the end of 2015, no significant new developments had been reported despite the ongoing efforts of a 'Transitional Justice Working Group', set up by state prosecutors immediately after the Inter-American Court sentence specifically to press for compliance with it.

Non-applicability of amnesty to 'continuous crimes'

Thus, arguments against the validity of the amnesty law, or against its applicability to internationally defined atrocity crimes, including torture, have been

advanced but have not yet had substantial effect. Recently, however, there are signs of possible movement in regard to arguments based on existing domestic law about so-called 'continuous' or 'ongoing' crimes – that is, crimes that began during, but persisted after, the period covered by the amnesty law. This mainly applies to forced disappearances in which the victim's remains have never been found.

In October 2012, the federal justice system received a complaint from the Federal Prosecution Office of São Paulo against three men (a former colonel, a retired civil police commissioner, and a serving police commissioner) for the 1971 kidnapping of Edgar de Aquino Duarte. Duarte, a former naval fusilier expelled from the armed forces soon after the 1964 coup, was later detained and illegally held prisoner for three years before disappearing in 1973. The complaint utilised the 'continuous crime' rationale: according to a decision by the Ninth Federal Criminal Court of São Paulo, the amnesty law does not apply to the case because the kidnapping is still going on today, and will only end when the victim is released, if he is alive, or when his mortal remains are found.

Following the same line of reasoning, in 2012 prosecutor Otávio Bravo of the military justice system reopened 39 cases of disappearance. Although witness statements indicate that some of the victims were killed under torture, their bodies were never found. This allows for the legal reasoning that the crime of kidnapping is continuing today. Bravo supported this initiative based on three points: the decision in the Araguaia case; the fact that Brazil had recently (in 2010) ratified the International Convention for the Protection of All Persons from Enforced Disappearance; and the decisions of the Federal Supreme Court in two hearings, in 2009 and 2011, regarding the extradition from Brazil of individuals who allegedly participated in dictatorship crimes in Argentina. In Brazilian jurisprudence, the state can only extradite a person if the crime of which he or she is accused is not subject to a statute of limitations that, under Brazilian law, has already expired. In the process, the Federal Supreme Court accepted the precept that enforced disappearance is equivalent to kidnapping. This is considered a continuous crime in Brazil and thus is not subject to a statute of limitations (Virissimo 2012).

Reparations

Whereas little progress has been made to date with respect to criminal justice for past violations, there have been significant efforts in the field of reparations to victims and survivors of repression. Reparations, both economic and symbolic, have been made through both administrative and judicial routes. Administrative reparations programmes were initially targeted mainly at the relatives of victims who were killed or forcibly disappeared, but they were later expanded to include survivors of political persecution. Overall, reparations have been the principal transitional justice measure used by the Brazilian state, as well as the earliest to be pursued in any systematic fashion. The activities of the Special Commission on the Dead and Disappeared for Political Reasons and the Amnesty Commission,

discussed below, also expanded the symbolic dimension of reparations through an unexpected truth-telling effect and a deliberate focus on the cultivation of historical memory initiatives. In this way we see signs of a 'domino effect' in which reparations activities, including acknowledgement of responsibility and official apologies, have arguably been part of the groundswell leading to the present growth of truth and justice demands.

During the period of military rule, economic awards for damages were paid to victims, survivors, or their relatives, as ordered by court decisions. Although such cases cannot be considered part of transitional justice processes per se, they set a precedent for recognising the civil liability of the state. A case initiated by torture survivor Walter Alberto Pecoits reached a judgment in 1971, giving him the right to compensation for costs and loss of earnings until his full recovery, as well as to 'a pension that satisfactorily compensates his inability to work'.[6] In 1978, in the Vladimir Herzog case, the Court ordered the Brazilian state to pay damages to the victim's widow and children for the pecuniary loss and for pain and suffering resulting from his death under torture, even though a Military Police inquiry had confirmed the official story of a suicide and the State Attorney's Office accepted this conclusion. Since then, the Brazilian state has been held liable several times for the imprisonment, torture, death, or disappearance of politically persecuted persons (see Mezarobba 2012). Again, all such legal decisions have recognised only the state's civil liability.

Law of the Disappeared

In the Brazilian case, accountability for past crimes, broadly understood, began to move forward after the transition to democracy, with the gradual loss of power of the military and the incorporation of human rights policies into the national agenda. During the first term of Fernando Henrique Cardoso, in 1995, the Law of the Disappeared (Law 9.140) was enacted by the National Congress. The demand for accountability was long-standing, and the law was the outcome of continuous pressure exerted by relatives of the dead and disappeared and by human rights non-governmental organisations. With the passage of the law, the Brazilian state officially recognised, for the first time, its responsibility for the gravest human rights violations that had taken place during the military regime.

The Law of the Disappeared reaffirmed the conciliatory intent – and, by implication, the legitimacy – of the amnesty. However, it also stressed the pursuit of justice and the continuity of the state's responsibilities.[7] Victims' relatives welcomed the government's initiative to deal with the issue of the disappeared, but they expressed some reservations. One was that the law exempted the state from its obligation to identify and ascribe responsibility to those who were directly involved in the practice of torture or in deaths and disappearances. Another was that the burden of proof in each political persecution case fell on the relatives themselves. Relatives also questioned the fact that only families could request recognition of the state's responsibility, making the issue appear to be a series of

private grievances rather than a matter of public duty. Several amendments were proposed to the draft law, but none of them were accepted.

The Law of the Disappeared was thus approved in its original form. Under the law, the Brazilian government immediately recognised as dead a total of 136 people who had been recorded as forcibly disappeared for political reasons, and whose names were listed in the law's Appendix I. It was the first time that the state, without a judicial ruling, admitted objective responsibility for the illicit actions of its security agents involved in crimes such as kidnapping, arrest, torture, forced disappearance, and murder. Under the law, family members of the dead and disappeared gained the right to receive compensation from the state, based on a sliding scale. A nominal amount, equivalent at that time to US$3,000, was multiplied by the number of remaining years the disappeared person could have been expected to live. Appendix II of the law contained a table for calculating these payments.

After pressure from victims' relatives, the Law of the Disappeared was modified by two subsequent laws. In 2002, Law 10.536 extended the period for cases to be included by nine more years, that is, up until the new constitution was promulgated in October 1988. In 2004, Law 10.875 allowed the inclusion of victims who were killed in clashes with the police in public demonstrations. It also included those who had committed suicide as a result of political persecution, which included imminent jailing or psychological damage inflicted through 'acts of torture carried out by government agents'.

The Law of the Disappeared can be considered principally a reparations measure, although it had important acknowledgement functions with respect to state responsibility and the status of the disappeared. The law also established a significant truth-telling forum, the Special Commission on the Dead and Disappeared for Political Reasons.

Acknowledging survivors

Although the amnesty law provided a limited right to reinstatement of military personnel and civil servants dismissed for their opposition to the regime, it did not adequately address the multiple kinds of persecution inflicted on such persons. In an example of survivor mobilisation, organised groups of politically persecuted individuals in several states of the country persuaded the government to send to the National Congress a bill providing, among other things, economic reparations for those who had been impeded from practising their professions by the dictatorship. Like the Law of the Disappeared, this initiative was not a response to wide societal demand but resulted from the actions of survivors themselves, with the support of deputies and senators. Law 10.559, which came into force in 2002, met nearly all of their demands.

Law 10.559 recognised five rights held by survivors of political persecution who had subsequently been granted amnesty: the right to a declaration of the condition of *being* politically amnestied; the right to financial reparation; the right to include in the length of service (e.g. for the purpose of calculating a pension) the

period during which a person was suspended or blacklisted; the right to finish any programme of study that had been interrupted or to receive accreditation for qualifications obtained overseas during exile; and the right to reinstatement for civil servants, other public employees, and people who had been summarily dismissed, without due process, under emergency legislation. Most importantly, the law spelled out the various types of political persecution measures used by the military regime that should, henceforth, be recognised as a basis for awarding the status of 'politically amnestied person', with its associated entitlements. These victims became known as *anistiados* (amnestied, i.e. people who have already received amnesty) and *anistiáveis* (amnestiable, i.e. people still seeking amnesty).

The financial reparation provided under the law to those eligible is by nature indemnificatory.[8] It can be carried out in either of two ways: as a single payment, set at 30 times the monthly minimum wage for each year of persecution, to those people who, while qualifying, are unable to prove their past employment; or as a permanent and regular monthly payment to those who can prove their employment relationship.[9] The law also stipulates that all politically persecuted persons have a right to receive backdated payments for up to five years before the date on which they first applied for amnesty. However, since the approval of Law 11.354 in 2006, any applicant seeking to exercise this right has to draft a 'declaration of compliance' expressing agreement with the value, manner, and conditions of payment. The applicant must also retract any lawsuits he or she has filed against the state, and agree to refrain from bringing any later legal challenge over the amount received.

Law 10.559 focuses exclusively on reparations for loss of earnings and does not contemplate non-material damages, such as psychological and moral harm. The courts continue to be the only route for pursuit of these latter demands.

Activating survivor reparations: the Amnesty Commission

In August 2001, even before Law 10.559 was finally approved, the Amnesty Commission (Comissão de Anistia) was formed. Operating under the Ministry of Justice, the Commission receives and processes applications for recognition of *anistiado* status. Relatives can apply in cases where the original survivor has died. Along with copies of personal documents, the applications must contain information on the politically persecuted person's professional life. Where it is not possible to include the documentary evidence required, the applicant can request that the Commission take steps to obtain it. All applications must spell out which rights or entitlements are being claimed, and on what grounds (i.e. the circumstances under which the affected person was victimised). The two-dozen official commissioners are not remunerated for their work. By law, the Commission must always include one representative nominated by the Ministry of Defence and another nominated by survivors' groups. The Commission generally acts with more flexibility than the judicial branch, making broad and non-restrictive interpretations of the claims received.

In the period 2001–10, the Amnesty Commission received 68,517 applications and adjudicated 57,628; of these, it granted 38,025 and denied the rest. Among the requests granted, 13,571 included some sort of financial reparation (Comissão de Anistia 2010). The formal awarding of the status of 'politically amnestied person' is announced in the official public gazette, *Diário Oficial da União*, just as it was during the dictatorship.

In addition to their economic effect, the reparation functions of the Amnesty Commission have led to some measure of truth-telling, providing another example of how the various dimensions of transitional justice are interrelated. In order to assess requests for amnesty, commissioners must gather a significant amount of information, including witness statements and documents, some of which originated from authoritarian-era repressive agencies. Since 2008, the Commission has also organised 'amnesty caravans' as part of an outreach programme to recover, debate, and reflect on the country's recent history. Each caravan includes cultural seminars, public hearings, and the adjudication of applications for amnesty. As of June 2014, 86 such caravans had been organised around the country.

The Brazilian state, then, has made some progress in meeting its obligation to offer reparations in both economic and symbolic terms. Throughout 2014, the year of the 50th anniversary of the coup, multiple official and unofficial events such as debates, exhibitions, and launches of books and films about the dictatorship took place around the country and abroad.

Truth-finding

Despite the absence of criminal accountability for human rights violations, there have been significant efforts to establish the facts regarding these violations. Truth-finding in Brazil has unfolded in two main phases. In the first phase, beginning immediately after the transition to democratic rule, efforts by social movements, civil society groups, and churches predominated. In the second phase, formal, state-sponsored efforts were added to the continuing efforts of non-state entities. The second phase included a full truth commission, which was proposed under the presidency of Lula da Silva and carried out under the first presidency of Dilma Rousseff.

Early attempts at truth-finding: civil society groups and churches take the lead

During the last part of the dictatorship, with the state unwilling to investigate human rights violations committed by its agents, an unofficial truth investigation was mounted under the auspices of the Catholic Archdiocese of São Paulo and the World Council of Churches, without the government's knowledge or support.[10] From 1979 on, files from the military justice system were secretly copied and smuggled out of the country by defence lawyers. In 1985, just months after the return to civilian rule, the results of the investigation were published as a book

titled *Brasil: Nunca mais* (*Brazil: Never Again*). Based on a substantial body of evidence, collected during proceedings of the Superior Military Court and through recordings of denunciations of torture made by prisoners appearing before military courts, the report revealed how the system of repression had operated (Arns 1985). It included a list of 125 victims of politically motivated disappearance. *Brasil: Nunca mais* quickly became a bestseller in Brazil and was for many years the only authoritative, although not government-supported, narrative of human rights violations. Soon after its publication, a list of 444 military torturers was made public by the press, but neither the report nor this list of names generated any specific demand for an end to impunity. In spite of the efforts made, particularly by the relatives of the dead and disappeared, the situation remained unchanged for several years.

The Special Commission on the Dead and Disappeared for Political Reasons

The state-run Special Commission on the Dead and Disappeared for Political Reasons (Comissão Especial sobre Mortos e Desaparecidos Políticos, CEMDP) was created in 1996 by the Law of the Disappeared to formally recognise those murdered by the dictatorship. Its members were appointed by the president and included representatives from victims' families, the armed forces, the Federal Prosecution Service, the Foreign Ministry, the Human Rights Commission of the Chamber of Deputies, and civil society organisations. The CEMDP's mandate was to officially acknowledge individual cases of disappearance that were not listed in Appendix I of the Law of the Disappeared, locate their bodies, and assess requests for compensation under Art 10 of the law. Families of disappeared persons not previously acknowledged had 120 days from the date the law entered into force to submit applications, although additional evidence could be added subsequently. The CEMDP examined denunciations of politically motivated deaths and deaths by unnatural causes occurring in police facilities or 'similar facilities' between 2 September 1961 and 15 August 1979.[11] Importantly, the CEMDP interpreted 'similar facilities' as a juridical-political (rather than physical) concept, arguing that the state's responsibility must be recognised in each case where a non-natural death happened to a victim in state custody, irrespective of the location where he or she was held.

The CEMDP concentrated initially on obtaining death certificates for victims at civil registry offices. The 1996 legislation, like similar legislation passed elsewhere in the region, created a new category: death certificates could now make special reference to the Law of the Disappeared, given that the usual means of certifying an officially recognised cause of death were not available. Previously, the amnesty law had only allowed for a 'declaration of absence' in regard to disappeared persons. This amounted to a certificate of presumption of death, for the purposes of dissolving marriages and resolving inheritance issues, but the new certificates were regarded as a more permanent, or more acceptable, solution.

In the first phase of its work, the CEMDP analysed 339 possible cases of death or politically motivated disappearance in addition to the 136 the state had already recognised in Appendix I of the 1995 law. It concluded this stage in 2006, with 118 cases dismissed on the grounds that they lacked merit. The CEMDP did not investigate or try those responsible; it only analysed the circumstances surrounding the deaths, attempting to determine whether the victims had been killed by state agents and, if so, how this happened. In 2006, the CEMDP began collecting blood samples from victims' relatives to set up a DNA databank. This was done in an attempt to improve scientific accuracy in the identification of skeletons and any other mortal remains that might be uncovered in future. To date, the CEMDP continues to gather information on the possible location of clandestine graves in cities and rural areas where militants are likely to be buried, especially in the region of the Araguaia River.

The CEMDP's contribution to truth did not go unnoticed. In 2007, the Special Human Rights Department of the Brazilian Presidency (Secretaria Especial dos Direitos Humanos) published *Direito à memória e à verdade* (*Right to Memory and Truth*), which summarises the work of the CEMDP and presents the stories of fatal victims of the dictatorship. This book is the first official document of the Brazilian state that attributes to members of the security forces crimes such as torture, rape, dismemberment, decapitation, concealment of corpses, and the murder of opponents who were already in jail and, therefore, defenceless. These accounts also disproved earlier official propaganda stating that victims had committed suicide or had been killed while attempting to escape or during armed confrontation with the police. The book refers explicitly to 'state terror', stating that the victims 'died in struggle, as opponents of a regime that came about through violation of the democratic constitutional order' (Secretaria Especial dos Direitos Humanos 2007, 30, my translation). It is quite critical of past interpretations of the amnesty law that exclude investigation of such cases.

The CEMDP was set up as an agency of the Brazilian state, not of a particular government administration. Compared to the Amnesty Commission, which is also an official body, it has operated more independently of the government. Its results have both been accepted by successive governments and entered into the official record. It has had some impact on public opinion. Relatives received reparations if their loved one's case was acknowledged. Nonetheless, together with human rights groups, relatives' groups continued to campaign for an official truth commission that would also address crimes against survivors.

Late truth: a state-sponsored truth commission

During President Lula da Silva's administration, a working group was created to draft a law that would establish an official, government-sponsored truth commission.[12] The commitment of then minister of human rights Paulo Vannuchi, a survivor of the dictatorship who had also worked on the church-sponsored Nunca Mais project, was crucial in creating the working group, drafting the bill,

and pushing for its passage. With strong support from sectors of civil society and from human rights groups, the Brazilian Truth Commission Law (Law 12.528) was approved unanimously at the end of Lula's last term, in November 2011. On 16 May 2012, President Rousseff launched the National Truth Commission (Comissão Nacional da Verdade, CNV) in a ceremony attended by her four civilian predecessors in the presidency.

The CNV's overriding objectives, according to Law 12.528, were to 'realise the right to historical memory and truth, and promote national reconciliation'.[13] In her speech, President Rousseff, herself a former political prisoner and a victim of torture, called upon all Brazilians to understand and acknowledge the country's full history:

> 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.
>
> (Rousseff 2012; my translation)

The CNV's mandate included clarifying cases of torture, forced disappearances, and concealment of corpses, even if the crimes were committed outside Brazil; identifying the perpetrators, where possible; revealing the structures, locations, institutions, circumstances, and social consequences of grave human rights violations; and forwarding to the relevant public bodies (such as the prosecutors' office or judiciary) all information that could be helpful in locating the mortal remains of victims. Although the law covered crimes carried out between 1946 and 1988, a period bookended by the adoption of two democratic constitutions, the CNV's members decided to focus their efforts on the dictatorship years, from 1964 to 1985. Totally independent of the government, the Truth Commission was empowered to name perpetrators, compel testimony, and subpoena officials, including military officials. Its mandate also included recommending public policy reforms.

The CNV was composed of seven members, appointed by the president for a period of two years. Its members were required to be persons identified with the defence of democracy and constitutional institutions, and with respect for human rights. Beginning in May 2012, the CNV's staff was organised into 13 working groups, each studying a distinct theme such as gender violence, the treatment of indigenous groups, or actions against the Araguaia guerrillas. Over the course of its work, the CNV was linked with 217 collaborators, including researchers, consultants, volunteers, and administrative personnel. The Commission conducted or supported 80 public hearings and audiences in the federal district and in 14 of the 26 states of the country. The creation of the CNV made explicit a latent demand for truth, and about 100 other truth commissions were set up around the country.

The CNV signed collaboration agreements with 43 of these state or institutional commissions. Despite this wide reach, occasional criticisms were raised about lack of transparency and participatory mechanisms in the operations of the CNV.

Its mandating law enabled the CNV to coordinate its work with other public agencies, especially with the National Archives, the CEMDP, and the Amnesty Commission. Official sources of information were also consulted. Although the files of the armed forces from the dictatorship era had been mostly destroyed, the Truth Commission did not have to start from scratch. Some significant official archives have been located and opened since 1989. Millions of previously secret documents from the National Information Service (Serviço Nacional de Informações) and the Foreign Ministry and Federal Police, for example, were sent to the National Archives, where the CNV was able to access them. The CNV worked principally by examining existing accounts and documents rather than by holding oral public hearings to gather new evidence. Only 1,116 new testimonies were collected by CNV up to October 2014 (CNV 2014, vol. 1, 55). This was controversial among survivors, who had hoped for a more accessible public forum.

The CNV's mandate, initially set to expire in May 2014, was extended by President Rousseff until December of that year at the request of survivors and relatives. The Truth Commission's final report, released on 10 December 2014, disclosed the names of 377 perpetrators of atrocities, including the five dictatorship-era presidents plus the three members of the military junta that ruled the country between 31 August and 30 October 1969. Although the CNV did not have the legal authority to put defendants on trial, and had no prosecutorial power, its final report argued that the amnesty law should not apply to the named individuals because of the grave nature of the crimes they committed. In other words, it supported the argument that crimes against humanity cannot be subject to statutes of limitations or amnesty. The final report explicitly recommended that the relevant public bodies determine the legal responsibility – criminal, civil, and administrative – of the public officials involved in gross human rights violations that occurred during the period investigated.

Conclusions

Like other countries in Latin America, Brazil has experienced both advances and setbacks in its movement towards accountability for past human rights violations. Overshadowing all progress, however, is the fact that compliance with the state's obligation to prosecute atrocity crimes, including torture, is still pending. As of 2015, not a single perpetrator has been imprisoned for crimes committed during the dictatorship, except for the 1973 case mentioned earlier in this chapter. This situation continues despite the Inter-American Court ruling of November 2010, which stated that the provisions of the Brazilian amnesty law that prevent the investigation and punishment of serious human rights violations are not compatible with the American Convention, have no legal effect, and should not impede investigation of the facts. At the beginning of 2015, however, after reviewing the

National Truth Commission's report, the Federal Prosecution Service announced that it would start new criminal cases against state agents involved in dictatorship crimes. In early 2015, for the first time, several criminal claims were pending before the judiciary, despite the obstacles presented by the amnesty law.

Reparations, by contrast, are a dimension of accountability that has been relatively well addressed under the 1995 Law of the Disappeared and subsequent legislation. The expansion of beneficiaries in 2002 and 2004 was well received by relatives of the victims. The CEMDP has made significant efforts to promote accountability through truth-telling, in particular by expanding the state's responsibility for deaths of persons in custody through an emphasis on the concept of 'similar facilities'. But the CEMDP did not manage to achieve its goal of determining the whereabouts of victims. The Amnesty Commission has also advanced social acknowledgement and truth-telling, as well as symbolic and material reparations. However, Brazil still has a long way to go in recognising and fulfilling the rights to reparation of those once held to be enemies of the state.

For example, the 2002 law expanding reparations to survivors only applies to those who qualify for, and are prepared to go through the procedure of applying for, the status of *anistiado* (amnestied person). The fact that this term continues in common use can be seen as perpetuating the euphemistic language of transition or even the perverse logic of the dictatorship. According to the evidence available, Brazil is the only country in our sample that has managed to construct a logic by which victims, rather than perpetrators, must actively apply for amnesty. Furthermore, the rights of some categories of people affected by grave human rights violations, such as torture, are overlooked, and it may be no coincidence that the word 'victim' did not even appear in official discourse until 2011 (when it occurred in the law that created the National Truth Commission).

Indeed, 30 years after the end of the dictatorship, transitional justice has unfolded essentially on the terms envisaged by the military, in line with the negotiated, gradual path of the transition itself. It is no exaggeration to speak of a logic of amnesia constructed by the dictatorship. How else can one explain why the current reparations legislation allows much greater monetary compensation to the politically persecuted, who are able to demonstrate loss of income, than to the families of the dictatorship's fatal victims? How else are we to understand the fact that the National Security Law, dating from the military regime, remains in force? This logic of amnesia is only very slowly dissipating.

Apart from relatively small groups of relatives or survivors, Brazilian civil society has been largely absent from the accountability debate since 1979. It has only recently started to become involved, especially through truth and memory initiatives. In terms of prospects for the future, half of today's Brazilian population is under 30 and has no living memory of, or stake in, the dictatorship. They struggle to survive in a society marked by high rates of violence, where access to justice is still precarious. Supported by the findings and recommendations of the National Truth Commission, the process of accountability for past crimes could gain a new impetus, enabling Brazil to begin deconstructing the logic of forgetfulness. The

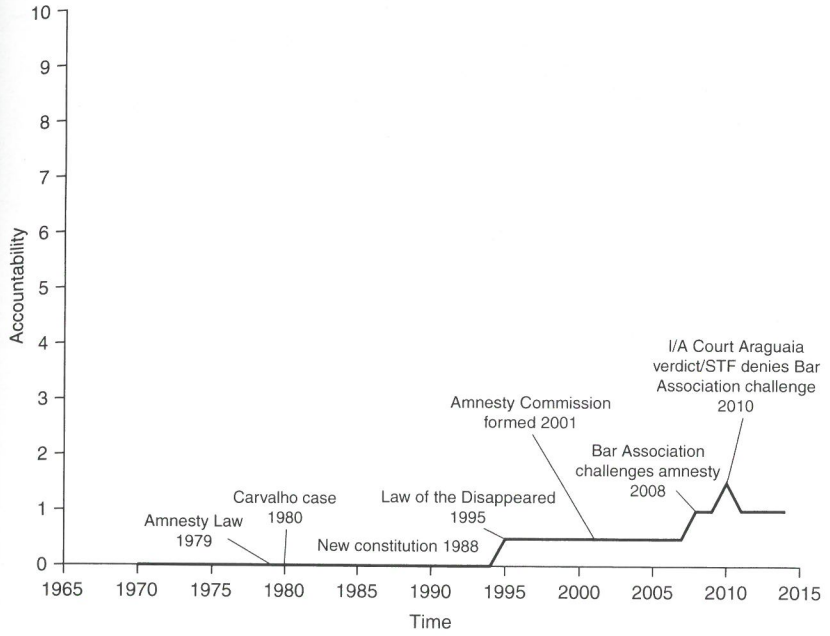

Figure 5.1 Brazil: the overcoming amnesty dimension of accountability, 1979–2014
Source: Authors' construction, 2015.

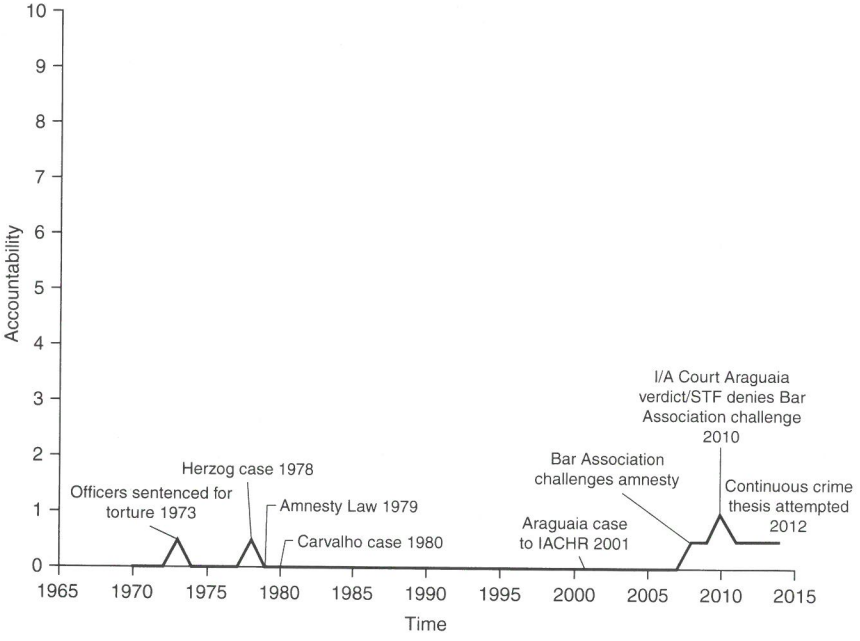

Figure 5.2 Brazil: the trials dimension of accountability, 1979–2014
Source: Authors' construction, 2015.

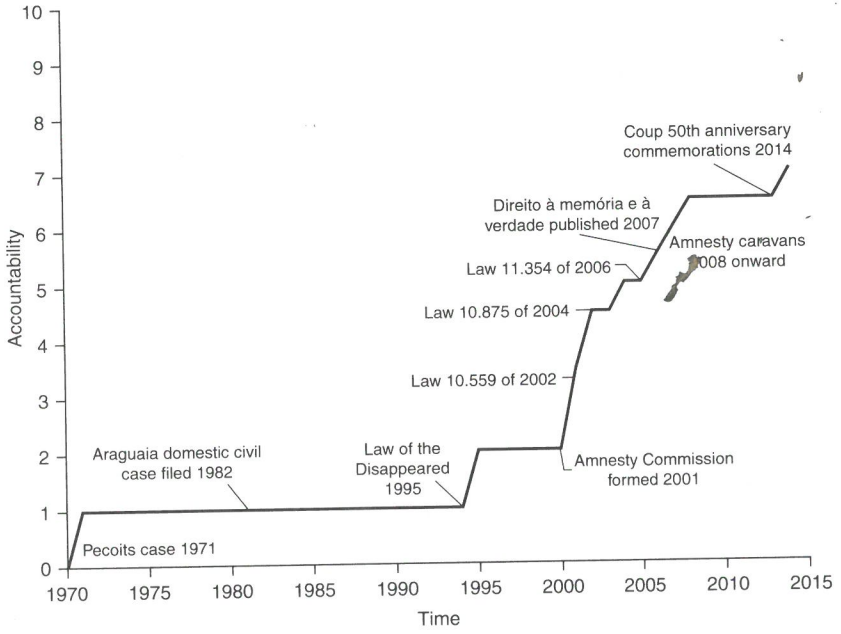

Figure 5.3 Brazil: the reparations dimension of accountability, 1979–2014
Source: Authors' construction, 2015.

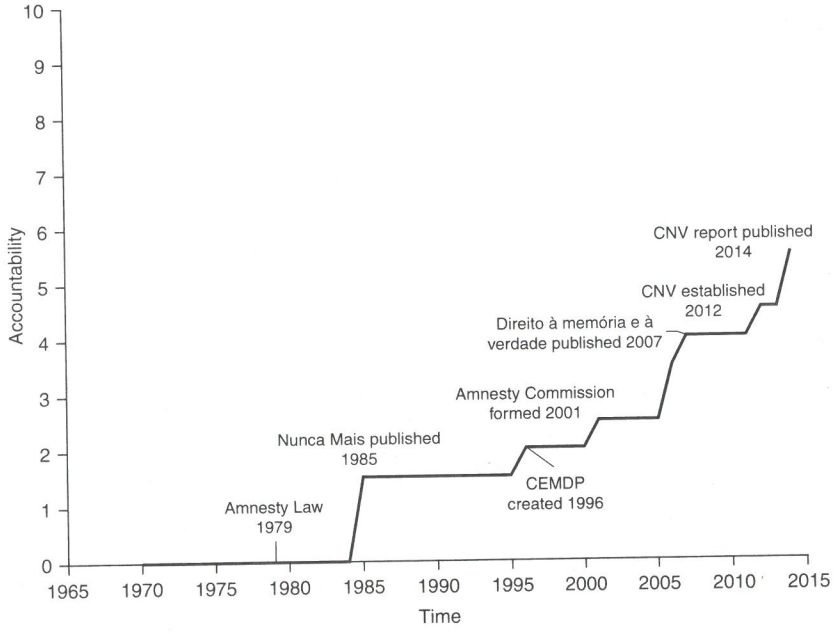

Figure 5.4 Brazil: the truth dimension of accountability, 1979–2014
Source: Authors' construction, 2015.

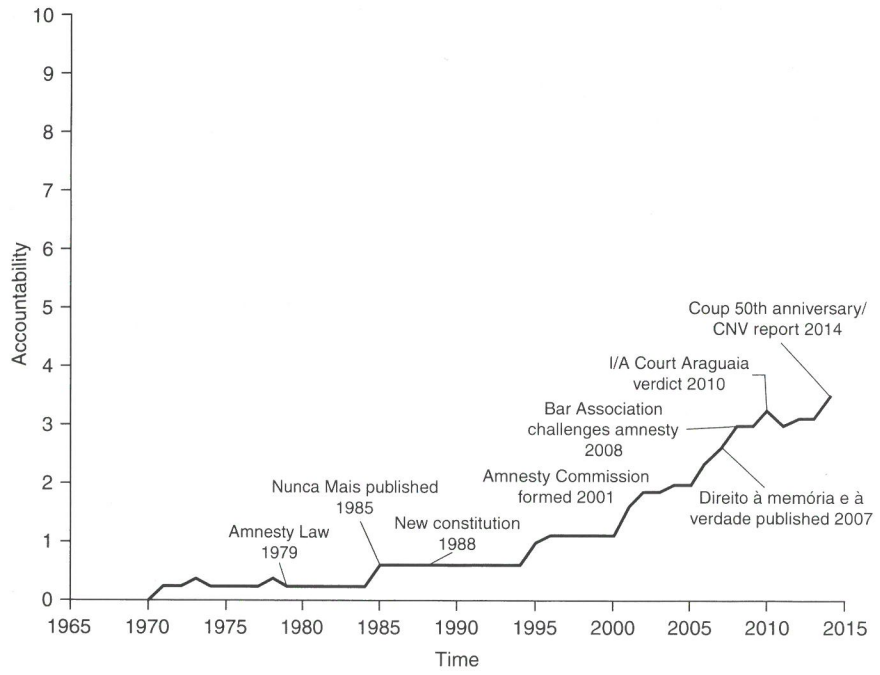

Figure 5.5 Brazil: overall trend towards accountability, 1979–2014
Source: Authors' construction, 2015.

challenge is to make clear, for a mainstream population concerned with political corruption and 'ordinary' violence, the connection between the past and the present in order to construct a better future.

Notes

* The author thanks Professor Roberto Marcondes Cesar Jr. for all his help.

1 See Stepan (1986), Sallum (1996), and Soares, D'Araujo, and Castro (1995) for more detailed accounts.
2 One of the many Brazilian entities that supported the pro-amnesty movement was the National Conference of Brazilian Bishops (Conferência Nacional dos Bispos do Brasil). The CBA office in Paris, for its part, sent an open letter to the Brazilian government protesting the dictatorship's crimes and demanding general and unrestricted amnesty. Simone de Beauvoir, Julio Cortázar, Gabriel García Márquez, Jean-Luc Godard, François Jacob, Alfred Kastler, Alain Resnais, and Jean-Paul Sartre were among the 5,000 intellectuals and artists who signed the letter (Greco 2003, 266).
3 Supremo Tribunal Federal, verdict in Argüição de Descumprimento de Preceito Fundamental (ADPF) no. 153, April 2010. The ADPF recourse is an extraordinary measure designed to allow the STF to rule on major constitutionality issues arising from introduction of the 1988 constitution.

4 Inter-American Court of Human Rights (I/A Court HR), *Case of Gomes Lund et al. ('Guerrilha do Araguaia') v Brazil*, Judgment of 24 November 2010.
5 I/A Court HR, *Case of Gomes Lund et al. ('Guerrilha do Araguaia') v Brazil*, Monitoring Compliance with Judgment, 17 October 2014.
6 In August 1964, Pecoits, a surgeon, former mayor, and impeached deputy, was detained for interrogation, during which he was assaulted and blinded in his left eye. Ordered by the judiciary to pay damages, the state appealed but ended up losing after the decision was ratified by the Federal Supreme Court. Note by rapporteur Judge Oswaldo Trigueiro, Tribunal de Justiça, Recurso Extraordinário, Apelação 214–70 (Curitiba, 14 November 1979); Supremo Tribunal Federal, Recurso extraordinário 71.729, Paraná (Brasília, 8 June 1971).
7 That is, new rulers inherit from their predecessors active responsibility or liability for the commission of a past violation, at least until such time as the new rulers act to recognise the illegality of that violation. At that point, of course, they acquire distinct responsibilities, such as that of investigation and prosecution of the violation (see Robertson 2000).
8 Claims for compensation cannot be made by all survivors. According to Law 10.559, only individuals prevented for exclusively political reasons from conducting economic activities can make these applications.
9 In the second option, the value of this payment – essentially a lifelong monthly pension – generally corresponds to the remuneration that the victim could expect to receive if he or she were employed. It is established based on evidence presented by the applicant, information from official bodies, and market research, taking into account the survivor's profile. In any case, the value of the monthly payments cannot be below the national minimum wage nor above the ceiling set by the constitution for remuneration of civil servants.
10 An international fellowship of Protestant churches with headquarters in Geneva, the World Council of Churches was key in supporting human rights work in other Latin American countries, including Chile.
11 Law 10.559 covered the same time period as the amnesty law. The legislature considered that the Brazilian constitutional order had already been broken on 2 September 1961, when a military intervention tried to interrupt the tenure of Vice President João Goulart after the resignation of President Jânio Quadros (January–August 1961).
12 The author advised on preparation of the draft bill that established the National Truth Commission. In this capacity she led part of the dialogue with the Ministry of Defence and the armed forces and coordinated research on gender violence and sexual violence during the military dictatorship.
13 My translation. The text of the law is available in Portuguese on the Brazilian presidency website, www.planalto.gov.br/ccivil_03/_Ato2011-2014/2011/Lei/L12528.htm.

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