LEGACIES OF STATE VIOLENCE AND TRANSITIONAL JUSTICE IN LATIN AMERICA

A JANUS-FACED PARADIGM?

EDITED BY
NINA SCHNEIDER AND MARCIA ESPARZA

Published by Lexington Books
An imprint of The Rowman & Littlefield Publishing Group, Inc.
4501 Forbes Boulevard, Suite 200, Lanham, Maryland 20706
www.rowman.com

Unit A, Whitacre Mews, 26-34 Stannary Street, London SE11 4AB

British Library Cataloguing in Publication Information Available

Library of Congress Cataloging-in-Publication Data

Legacies of state violence and transitional justice in Latin America : a Janus-faced paradigm? / Edited by Nina Schneider and Marcia Esparza.
p. cm.
Includes bibliographical references and index.
ISBN 978-1-4985-1385-2 (cloth : alk. paper) – ISBN 978-1-4985-1386-9 (ebook)
1. Transitional justice–Latin America. 2. Violence (Law)–Latin America. 3. Crimes against humanity–Latin America. 4. Political violence–Latin America. I. Schneider, Nina 1980- editor. II. Esparza, Marcia, editor.
KG574.L44 2015
340'.115098–dc23
2015029159

™ The paper used in this publication meets the minimum requirements of American National Standard for Information Sciences Permanence of Paper for Printed Library Materials, ANSI/NISO Z39.48-1992.

Printed in the United States of America

Contents

Chapter Three

Transitional Justice from the Margins

Legal Mobilization and Memory Politics in Brazil

Cecília MacDowell Santos

Since the beginning of the twenty-first century, a new transitional justice paradigm has been normalized and globalized (Teitel 2003; McEvoy 2008). This paradigm includes the establishment of normative mechanisms such as reparation, civil and criminal accountability, truth commissions, sites of memory, lustration, and so on. It is particularly remarkable to observe the global rise in legitimacy of the norm on individual (not simply state) civil and criminal accountability, a phenomenon that Lutz and Sikkink (2001) dub a "justice cascade." New studies on transitional justice have emerged to examine how this global paradigm has been constituted, absorbed, and translated into norms at the international, national, and local scales. But it remains to be further examined how transitional justice policies are contested in different countries; what narratives are produced by transitional justice policies at different locales; what becomes visible and invisible in these narratives; who becomes a concrete (not simply abstract) subject of the rights to memory, truth and justice; and who is acknowledged as a political subject of history, memory, and justice.

One of the main recent trends in the literature on transitional justice in Latin America has examined three types of questions: first, it asks what *type, model and/or phase* of transitional justice mechanisms have been adopted within the region (Olsen, Payne, and Reiter 2010; Payne, Abrão, and Torelly 2011); second, what *factors* explain the differences between the models and phases (Olsen, Payne, and Reiter 2010; Payne, Abrão, and Torelly 2011; Reátegui 2011; Brito, González-Enríquez, and Aguilar 2001); and third, what are their *impacts* on human rights and democracy (Lutz and Sikkink 2001; Roht-Ariaza and Mariezcurrena 2006; Olsen, Payne, and Reiter 2010; Sik-

kink 2012). This literature has emphasized the role of states, transnational human rights advocates and international organizations as the main motors of transitional justice politics. Notwithstanding its contributions to studies of transitional justice, this literature tends to assume that state action is linear and progressive and that the state is a homogenous actor. Moreover, it does not pay sufficient attention to the local cultural, social and political processes, as well as practices of civil society actors, such as groups of families of the disappeared and human rights non-governmental organizations (NGOs), that might shape the politics of transitional justice from inside and outside of the state.

A second recent trend in studies of transitional justice in Latin America focuses on *domestic political processes* and *civil society actors*, including, for example, comparative and single country studies of civil society mobilization practices (Collins 2006; 2008; 2010; Burt, Fried, and Lessa 2013). Paying particular attention to the role of domestic legal action and courts, Collins (2006) formulates the concept of "post-transitional justice" to refer to a new phase in the politics of memory and justice, characterized by the legal actions for justice (civil and criminal accountability) initiated by nonstate actors, as opposed to the previous phase of "transitional justice" controlled by states and characterized by the lack of civil and/or criminal accountability of perpetrators of human rights violations. Collins' analysis of social mobilization practices by domestic and nonstate actors is an important contribution to studies of transitional justice in Latin America. However, the concept of "post-transitional justice" does not move away from a linear, static-phase perspective on transitional justice, which tends to overlook the continuities in the practices and power dynamics both within state sectors and between the state and civil society actors. Moreover, this concept does not shed light on a critical understanding of the politics of representation involved in transitional justice politics. In fact, very few studies of transitional justice in Latin America examine the question of how some types of knowledge and practices become visible and are placed at the center of politics while others may be marginalized or hidden in accounts of transitional justice (for exceptions, see Maeso 2010; Atencio 2014).

The Brazilian case is often overlooked in the scholarship on transitional justice in Latin America produced outside of Brazil. When examined, it is usually depicted from the perspective of the state and without sufficient attention to the conflicts over the policies established by the state (for exceptions, see Santos 2010; Schneider 2011; Atencio 2014). Even the scholarly books and articles published on the politics of memory, truth, and justice in Brazil pay little attention to the mobilizations by civil society actors (for exceptions, see Teles 2005; 2010; Santos 2009). This chapter aims to fill this gap. It focuses on Brazil and proposes a local and transnational legal mobilization approach (McCann 2006) to transitional justice politics on the ground

and from the margins. In the footsteps of the "sociology of absences" formulated by Boaventura de Sousa Santos (2014) as a critical analysis of the production by hegemonic thinking of certain types of knowledge and practices as nonexistent, this chapter seeks to uncover the legal mobilization practices by nonstate actors that are often represented at the margins, and are hidden or undermined in official accounts and in most scholarly works on transitional justice in and about Brazil. The uncovering of the "margins" is also inspired by the critical perspectives of feminists of color such as bell hooks (1984) and Audre Lorde (1984) in their calls for placing the experiences of black women at the center of feminist studies. At the same time, the "margins" are viewed as sites of production of multiple types of knowledge and practices, therefore they represent a plurality of engagements with memory politics. Furthermore, the memories produced in the "margins" or "peripheries" should not be conceived of as completely separate from the hegemonic memory produced at the "center," nor should the margins and the center be linked by a principle of causality (Kobalec 2014). Legal mobilization practices by families of the disappeared do not determine or cause the transitional justice policies established by the Brazilian state, and vice-versa. They might interact and shape each other at particular historical moments, but one is not the result of the other.

Drawing on cases of local and transnational legal actions initiated by families of the disappeared and by former political prisoners since the 1970s, this chapter argues that legal mobilization has been an important part of these actors' struggles for memory, truth, and justice, *during and after* the military regime, which lasted from 1964 to 1985. Most of these legal actions have had the goal of civil accountability. The claims and types of legal actions have certainly been shaped by the changing "political and legal opportunity structures" and socio-historical contexts in which they are embedded, as illustrated by the trajectory of the Araguaia Guerrilla case, which I examine in detail elsewhere (Santos 2010).[1] While the recent adoption of the "transitional justice" vocabulary and of the global norm of civil and criminal accountability by some sectors of the Brazilian state has been shaped by the discourses of and pressures from regional interstate organizations and international NGOs, it is certain that these pressures from above have been continuously provoked by local and transnational legal actions carried out by families of the disappeared, former political prisoners, and their allies. Yet, the official and scholarly publications on "transitional justice" in Brazil often make the political role played by these civil society actors invisible or marginal, or undermine the agency of these actors in their struggles for the rights to memory, truth, and justice.

This chapter is divided into three parts, in addition to this introduction and the conclusion. In what follows, I start with an overview of the new studies on transitional justice in Latin America, to which this chapter aims to con-

tribute. This will be followed by an examination of how legal mobilization by nonstate actors is portrayed as marginal in the accounts of transitional justice politics in Brazil. I will then present some of the emblematic legal actions initiated by families of the disappeared and former political prisoners from the 1970s until the 2000s.

NEW STUDIES ON (POST-)TRANSITIONAL JUSTICE IN LATIN AMERICA

Contrary to assertions by scholars of "transitions" in the 1980s, new empirical studies on transitional justice in Latin America have challenged the argument that criminal and civil accountability in cases of serious violations of human rights committed in the recent past by authoritarian states damage democracy, peace, and reconciliation (Brito, González-Enríquez, and Aguilar 2001; Lutz and Sikkink 2001; Roht-Ariaza and Mariezcurrena 2006; Olsen, Payne, and Reiter 2010; Sikkink 2012). This literature examines what factors and actors (domestic and international) contribute to the emergence of transitional justice mechanisms in different regions, as well as the impacts such measures have on democracy and human rights.

Although it is not possible to identify a uniform pattern of transitional justice policy in Latin America, one trend in this literature indicates that both domestic and internal factors (e.g., the political will of governments, the level of civil society mobilization, and the power of the military), as well as external factors (e.g., pressures from international governmental and nongovernmental organizations) contribute to the emergence and the kinds of effects of transitional justice policies. This literature calls attention to the need to go beyond country case studies and qualitative analyses of individual cases. They combine both qualitative and quantitative methods, compiling a large sample of countries and databases, including statistical and historical analyses of the factors and models of transitional justice from a national and comparative perspective at regional and global scales (Olsen, Payne, and Reiter 2010; Sikkink 2012).

This type of comparative and large-scale quantitative and qualitative research is much needed. However, it tends to overlook the dynamics of local social, cultural, and political processes and the practices of actors that either contribute to or challenge the establishment of certain transitional justice policies on the ground. By mapping national and international *factors* without paying close attention to social, cultural, and political actors and *processes* on the ground, this type of analysis tends to center on the policies established by the state and assumes a linear, static-phase perspective on (transitional) politics.

Criticizing the state-centered and international normative approach to transitional justice, McEvoy and McGregor (2008) propose an alternative approach that they call "transitional justice from below." Contrary to "transitional justice from above," which focuses on states and international norms, "transitional justice from below" is an approach that highlights the need to study different scales of justice (local, national, and international) and calls for close attention to the practices of various actors beyond the state or international governmental organizations, such as victims' groups and organizations, non-governmental organizations, community and grassroots groups, and so on.

In her study on the emergence and effects of the global justice norm (i.e., individual criminal accountability), Sikkink (2012) considers both domestic and international factors and pays attention to historical political processes at multiple levels of analysis. Refuting the argument of "contagion" present in the literature on diffusion of norms, she argues that the "agency" and "choice" of individual activists involved in the promotion and diffusion of the justice norm were crucial for the global rise in legitimacy of this norm. Sikkink (2012) explains that this was made possible thanks to the work of human rights activists, especially from Argentina, who operated domestically and internationally to promote their ideals and the justice norm. Missing in this groundbreaking study is an in-depth analysis of collective action, such as mobilizations by former political prisoners, families of the disappeared and their allies, and how legal, social and cultural mobilization might shape the political and legal culture of different sectors of the state.

Indeed, as noted by Burt, Fried, and Lessa (2013), to better understand the politics of transitional justice in different countries in Latin America it is necessary to further examine the local historical processes and the mobilization waged by civil society actors, as illustrated in the case of Uruguay. Collins' (2006; 2008; 2010) comparative study of what she dubs "post-transitional justice," based on the cases of Chile and El Salvador, also calls for a grounded analysis of transitional justice, based on a social movement and political opportunity structure perspective on the use of courts. Observing the repealing of amnesty laws during the 1990s and a new wave of legal actions, Collins (2008, 22) characterizes this new wave as a "post-transitional justice" phase, "usually driven by nonstate actors, including individual claimants, lawyers, and human rights organizations." In contrast, she notes, the previous phase of "transitional justice" that marked the 1980s was characterized by transitional settlements and self-amnesty laws usually established by the state alone (Collins 2008, 22).

Collins (2010, 44) does not assume that "accountability actors"—actors promoting civil or criminal legal actions against perpetrators—only appear after "transition." These actors may emerge from existing human rights movements or may be new, joining pro-accountability actors during or after

the establishment of "transitional justice" outcomes such as truth commissions. Likewise, Collins (2010, 44) does not assume that nonstate actors use the strategy of legal action only after the "transitional justice" period. "Transition is not necessarily the first time some of these groups and individuals have acted in broader human rights mobilization, or attempted to use legal strategies and international links to achieve certain goals. But the specific goal of accountability—civil or criminal legal actions against perpetrators—may be new" (Collins 2010, 44). Regarding the underlying factors shaping the impacts of "post-transitional justice," Collins (2006; 2008; 2010) argues that domestic factors, such as local legal action and the culture of the national courts, are more influential in shaping the development of "post-transitional justice" outcomes than the outside pressures coming from international institutions and transnational advocacy networks.

Collins' grounded perspective on the use of courts for the promotion of civil and/or criminal liability of perpetrators of human rights violations in Latin America is a major contribution to studies of memory and justice politics. The historical and political processes taking place in specific locales are carefully examined. This perspective is important for understanding the legal and political cultures of multiple social actors. Collins' comparative approach also helps to avoid generalizations from one case study. However, the concept of "post-transitional justice" does not help us to understand the continuities in the practices of both nonstate and state actors. Similarly to the studies on "transitional justice from above," this concept continues to frame the struggles for the rights to memory, truth, and justice from a developmental, linear, and static-phase perspective. Rather than replacing the term "transitional justice" with "post-transitional justice," it is necessary to pay attention to transitional justice as a historical and political process marked by both continuities and discontinuities.

In the case of Brazil, for example, nonstate actors have initiated legal actions since the 1970s, during and after the military regime, before and after the establishment of the Amnesty Law of 1979 (Law 6,683/79). The interpretation of this law—whether or not it grants amnesty to state agents who committed serious human rights violations—continues to be an object of political and judicial debate. Although nonstate actors have not initiated a large number of legal actions, as in the cases of Argentina and Chile, their legal mobilization practices have focused on emblematic cases, and have been important for challenging the limits of transitional justice policies in Brazil. Since the 1970s, they have not been alone in these legal actions either. Both domestic and international non-governmental organizations and, most recently, agents of the state, such as a group of federal prosecutors at the Federal Office of the Public Prosecutor (*Ministério Público Federal*), have become allies of families of the disappeared and former political prisoners,

and have initiated a number of legal actions to promote state and individual civil and criminal liability.

Both domestic and international forces contributed to the creation of reparation commissions in the 1990s and early 2000s, such as the Special Commission on Political Deaths and Disappearances of Persons (*Comissão Especial sobre Mortos e Desaparecidos Políticos*, hereafter CEMDP), housed at the Secretariat on Human Rights (*Secretaria de Direitos Humanos*, or SDH), and the Amnesty Commission (*Comissão de Anistia*, herafter CA), housed in the Ministry of Justice. Domestic and international forces also pressured the Brazilian government to establish in 2012 the country's first National Truth Commission (*Comissão Nacional da Verdade*, hereafter CNV).[2] It should be noted that the CEMDP and the CA are hybrid institutions, in the sense that they are composed of state officials representing different state departments or ministries, on one hand, and civil society actors selected due to their recognized knowledge of and commitment to human rights, on the other hand. The CEMDP includes one representative of families of the disappeared. Some civil society members of the CA are also victims of political repression, even though they do not serve on this commission as representatives of the victims. The CNV commissioners, on the other hand, were only civil society actors selected by President Dilma Rousseff on the basis of their knowledge of and commitment to promoting human rights. None of these commissioners represented families of the disappeared.

In sum, the case of Brazil cannot be characterized as "post-transitional justice." In fact, it is more productive to examine the role played by both domestic and international forces, as well state and nonstate actors, to understand the power relations and the processes of negotiation and contestation involved in the establishment of transitional justice policies over time. Before illustrating how legal mobilization by nonstate actors has been an important aspect of Brazilian politics concerning memory, truth and justice since the 1970s, I shall first provide evidence of official accounts of transitional justice that have either made invisible or understated the political role of the legal actions initiated by families of the disappeared and former political prisoners throughout the past forty years.

OFFICIAL REPRESENTATION OF LEGAL MOBILIZATION BY NONSTATE ACTORS

In her critical narrative analysis of what is made visible and invisible in Brazil's first official truth report, *Direito à Memória e à Verdade: Comissão Especial sobre Mortos e Desaparecidos Políticos* (The Right to Memory and Truth: Special Commission on Political Deaths and Disappearances of Persons), published in 2007 by the CEMDP, Rebecca Atencio argues that,

> It is important to attend critically to the question of visibility because this report is a foundational narrative of the Brazilian state's new politics of memory: it marks the first time the state has officially and systematically laid out its vision of what transitional justice means in the Brazilian context. (Atencio 2014, 85)

This was the final report on the work of the CEMDP, created in 1995 by then President Fernando Henrique Cardoso to grant financial reparations to families of the persons who were killed or disappeared during the dictatorship. Atencio (2014, 85) argues that this report makes visible political disappearance and the "rights to memory and truth," "but renders justice invisible." She notes that the report uses the term "justice" only on one occasion. The meaning of justice is also redefined. "The authors of the report do not equate justice with criminal punishment (nor with the identification of perpetrators)." (Atencio 2014, 86). Instead, referring to the work of the CEMDP and the CA, the report equates justice with "financial reparations," which become, in the report's words, "natural and legal consequences" (Atencio 2014, 86).

Another important aspect of what is made visible and invisible in this report, according to Atencio, is the representation of the struggle waged by families of the disappeared. The report acknowledges these families' pressure in favor of amnesty and the right to truth in the 1970s, acknowledging their critiques of the Amnesty Law of 1979. However, "A close reading reveals that this history largely suppresses the existence of demands for punishment" (Atencio 2014, 86). Indeed, Atencio points out that the critiques on the limits of the CEMDP and the demands for criminal and civil accountability made by some families of the disappeared are briefly and superficially addressed in the report. "By omitting the fact that at least some families also pressured for punishment, the report not only silences those demands but also implies that even if they exist, they weren't legitimate" (Atencio 2014, 86). In sum, this report "embraces the discourse of reconciliation by memory, giving its culturally dominant approach to the past political hegemony" (Atencio 2014, 86). Although the term "transitional justice" was not used in this first official report on Brazilian policies on truth and memory, Atencio's critical reading brings to light how certain nonstate actors' practices and awareness are made invisible by hegemonic thinking.

A year after this report was published, one agency of the state—the CA—began to publicly defend not only policies on "truth and memory" (e.g., educational and memorial projects) but also "justice" (in the sense of state and individual civil and criminal accountability). The SDH and a group of federal prosecutors at the Federal Office of the Public Prosecutor also adopted this position, which aroused much reaction from the military and then dominant civilian sectors of the state and society. This shows that the

state is not a homogenous actor and that transitional justice politics does not take a progressive, linear path (Santos 2010). Yet, despite the political shift in one sector of the state, which culminated in the creation of Brazil's CNV in 2012, I want to reiterate Atencio's critical reading and further argue that the legal mobilization practices waged by families of the disappeared and former political prisoners continued to be represented by hegemonic political thinking as marginal. Most of the legal actions initiated by these families are not mentioned in the 2007 CEMDP report. The official and scholarly publications using the term "transitional justice" often place at the margins these civil legal actions and struggles for justice.

A case in point are the publications organized by the CA. The CA was created in 2001 by President Cardoso to provide financial reparations to civilians and military officials who were persecuted (e.g., arbitrarily arrested, fired, forced to leave the country in exile, and so on) by the military regime for political reasons. This reparation commission became more active and efficient only after 2007, under the leadership of its new president Paulo Abrão, selected for this position during President Lula's second term (2007–2010). Paulo Abrão and Marcelo Torelly, the CA's special advisor until 2011, expanded the work of this commission and greatly contributed to the promotion of "transitional justice" debates and policies in Brazil. In their capacity as heads of the CA, they looked for guidance from and engaged in dialogue with national and international scholars and practitioners, such as the International Center for Transitional Justice (ICTJ) based in New York, as well as other organizations based in Latin American countries. In 2008, the CA began to officially use the term "transitional justice," signing an international cooperation program with the United Nations and incorporating into its projects the paradigm of transitional justice promoted by the UN and the ICTJ (Marcelo Torelly, e-mail message to author, August 7, 2013).[3] Thanks to this international cooperation program, the CA was able to organize a series of international conferences on transitional justice in partnership with renowned universities in Brazil, European countries, and the United States.[4] Since 2009 the CA has published the journal *Revista Anistia Política e Justiça de Transição* (Political Amnesty and Transitional Justice Journal) and a series of books on the issue of transitional justice (see, for example, Payne, Abrão, and Torelly 2011).

Overall, these publications on "transitional justice" in Brazil tend to focus on the actions taken by the state, portraying memory politics mainly "from above" and from a linear, progressive, and static-phase perspective. Abrão and Torelly (2013), for example, describe the development of "transitional justice" policies in Brazil based on the changing meaning of amnesty across three separated phases. The first phase started with the establishment of the Amnesty Law in 1979. It corresponded to a dominant political, cultural, and social culture that forged "forgetting" and "impunity" in opposition to the

fight for "memory and truth" carried out by families of the disappeared and political prisoners. The second phase started with the creation of the CEMDP in 1995, followed by the CA in 2001. The authors point out that this phase was characterized by the politics of "reparation," which indirectly also promoted a politics of "memory and truth," as illustrated by the educational and memorial projects promoted by the CA. According to the authors, this second phase also sparked "new" mobilizations by families of the disappeared, former political prisoners, civilian and military public officials persecuted by the military regime, among other actors. The third phase began with the creation of the CNV in 2012. It is characterized by the politics of "truth," fostering "new" social mobilizations and political conflicts over the end of impunity.

Abrão and Torelly (2011) acknowledge the role of social mobilization in all of these phases. As they report, the 1979 Amnesty Law was a result of strong social mobilization carried out by diverse social movements which opposed the military regime. The reparation commissions created during the second phase also resulted from social mobilizations waged by two movements: the first movement was formed by what the authors describe as a "small group of families of the disappeared," resulting in the creation of the CEMDP in 1995; and the second movement was formed by workers who had been fired or prevented from working during the dictatorship due to their exercise of the right to association. This movement led to the creation of the CA in 2001. Drawing on existing historical research, the authors persuasively note that after the passage of the 1979 Amnesty Law, new social movements did not include in their agenda any demand for "transitional justice" in Brazil, and society at large did not care about this issue either. Thus, they aptly argue that the "low level of social mobilization" by society at large is one of the factors that explain the persistence of impunity (Abrão and Torelly 2011, 237–39).

The authors situate the third phase within the context of "new" social movements formed by a new generation of activists who have embraced the pro-accountability cause, such as the youth movement called *Levante Popular da Juventude* (Youth Popular Uprising). These are not direct victims or family members of the disappeared or former political prisoners. Although their mobilizations are socially relevant, the authors explain the recent change in the position of the Brazilian government—in favor of some transitional justice measures, such as the creation of the CNV—as a result of two institutional factors: changes in the national political forces within the state, thanks to the new directions taken by the reparation commissions since 2007, and changes in the international forces, including the 2010 decision by the Inter-American Court of Human Rights (IACtHR) that condemned Brazil in the Araguaia Guerrilla case (Abrão and Torelly 2013).

The importance of this account from inside the state on the development of transitional justice policies in Brazil is undeniable. The identification of these three policy phases does not contradict but rather complements my reading on transitional justice from the standpoint of nonstate actors. However, this state-centered analysis of separated phases ends up making invisible or placing at the margins of transitional justice politics the *ongoing* struggles and legal mobilization practices waged by families of the disappeared and by former political prisoners. In this perspective, the families are viewed as "old" actors and as "victims," not as political subjects actively involved in transitional justice politics in Brazil today. Not surprisingly, the authors overlook the fact that the 2010 IACtHR decision was a result of transnational legal mobilization initiated by civil society actors, namely by the alliance formed between organized groups of families of the disappeared and international human rights NGOs. They also overlook the alliances made between the "old" (family victims) and the "new" (non-family) activists who are fighting for civil and criminal accountability in contemporary Brazil.

The 2014 CNV final report is another example of the hegemonic representation of legal mobilization practices by the families of the disappeared and former political prisoners as marginal. The CNV was established in 2012 to uncover the "serious human rights violations" that took place in Brazil between 1946 and 1988 (Law 12,528/2011).[5] The CNV worked for two years and seven months, focusing on the state apparatus, ideologies and practices of repression during the military dictatorship (1964–1985). Despite its limited mandate, restricted to finding "truth," not "justice," and the initial criticisms raised by families of the disappeared claiming that the CNV was not efficient and transparent, this unprecedented truth commission was an important advancement in the politics of transitional justice in Brazil. It is not within the scope of this chapter to discuss the process of creation and operation of the CNV. It is also too early to evaluate its effects on Brazilian society and on transitional justice politics. But it is important to highlight a few advancements brought about by the CNV final report, released on December 10, 2014, and discuss how this report relates to and portrays the organized groups of families of the disappeared and former political prisoners.

The CNV final report is the first official acknowledgment that the Brazilian state created a repressive apparatus during the military dictatorship. This report reiterates official statements and knowledge already made public in the 2007 CEMDP report. It largely relies on secondary sources, especially on the research previously conducted by national and international scholars and the data collected for the *Brasil: Nunca Mais* project.[6] It also builds on the "dossiers" about the persons killed and disappeared during the military regime, which were organized by non-governmental organizations composed of families of the disappeared.[7] Yet the CNV report, which includes three volumes and is over 4,000 pages in length, also collected unprecedented

testimonies by victims and agents of repression alike, and counted on the complementary work conducted by numerous truth commissions established by states' assemblies and universities, among other institutions.

Contrary to the "reconciliation by memory" approach of the 2007 CEMDP report, the CNV final report goes further by laying out the repressive institutions and clandestine centers of repression and torture created during the dictatorship, naming 377 state officials from all levels of state administration, who are cited as responsible for designing and implementing a repressive regime based on forced disappearances, extrajudicial executions, arbitrary arrests, and the systematic practice of torture. Moreover, the CNV final report makes explicit its support of transitional justice measures relating not only to "truth and memory," but also to "justice" (civil and criminal accountability) and "institutional reform," as recommended by the United Nations and the Organization of American States. One of the CNV's 29 recommendations to the Brazilian state is that public agents who committed "serious violations of human rights" during the military dictatorship be held responsible and subjected to the appropriate criminal, civil and administrative sanctions. The CNV also called for the Judiciary to disregard the Amnesty Law of 1979 with respect to these types of violations (CNV 2014, 966). However, one of the seven commissioners, the former Minister of Justice José Paulo Cavalcanti Filho, did not support this recommendation, a position that is shared by the Armed Forces and many civilians in government and in the Judiciary. In her emotional speech made at the official delivery of the CNV final report, President Dilma Rousseff signaled her lack of support to this recommendation and emphasized the continuation of the "reconciliation by truth" approach to transitional justice: "Truth does not mean revenge. Truth does not need to be a reason for hate or reckoning."[8]

Due to lack of cooperation on the part of the Armed Forces, the CNV was not able to advance much official knowledge or confirm unofficial data on the number of persons arbitrarily arrested, disappeared and tortured under the military regime. But there is clear evidence that "The repressive system improved and became institutionalized" (CNV 2014, 105). Drawing on information from the American Embassy in Brazil, the CNV indicates that over 5,000 individuals were arrested on the days that immediately followed the military coup of 1964 (CNV 2014, 98). Indeed, according to the 2007 CEMDP report, over 50,000 individuals were arrested in the first months after the coup, and approximately 10,000 individuals lived in exile during the military regime (CEMDP 2007, 30). As of September 2014, the Amnesty Commission had received 62,000 petitions requesting financial reparations, out of which 35,000 were approved. This number attests to the pervasive and massive level of political persecution undertaken by the repressive regime (CNV 2014, 27). From 1964 until 1985, agents of repression systematically

used torture to extract information from political prisoners, even after the repressive state eliminated armed groups of resistance (CNV 2014, 349).

Regarding the number of political deaths and forced disappearances, the CNV final report confirmed a few less cases (434) than those indicated in the 2007 CEMDP report and in the last dossier organized by the families of the disappeared (see Almeida et al. 2009). It is interesting to note that the CNV final report acknowledges that this number does not correspond to the total number of deaths and disappearances but rather to what the CNV was able to confirm. The CNV final report also dedicates two chapters in the second volume to serious human rights violations perpetrated against peasants and indigenous people, and suggests an "expressive number of victims" (CNV 2014, 964). The third volume of the CNV final report is dedicated to listing a short bio of each individual who died or disappeared for political reasons during the dictatorship. This volume, as noted, draws on the 2009 dossier organized by families of the disappeared.

Although the CNV final report largely recognizes and draws on the work of "memory" and the struggle for "truth" waged by civil society actors and organized groups of families of the disappeared, these actors' legal mobilization practices and struggles for "justice" are marginalized in this report. The CNV final report dedicates one chapter to the Araguaia Guerrilla movement that took place in the late 1960s and early 1970s. The then clandestine Communist Party of Brazil (PCdoB) sent sixty-nine members to organize a guerrilla movement in the Araguaia region in the north of Brazil. The armed forces used 10,000 troops to decimate the movement, killing and disappearing the bodies of most guerrilla members. Local peasants and indigenous people also faced repression and torture perpetrated by military soldiers. The CNV final report includes information on the local and transnational legal actions initiated by twenty-two relatives of disappeared members of the Araguaia Guerrilla, but it does not give sufficient attention to this legal mobilization practice as part of civil society actors' struggles for "memory, truth and justice" (see CNV 2014, Vol. 1, Book II, Chapter 14). The Araguaia Guerrilla legal case and a few other legal actions initiated by families of the disappeared are also cited in one of the chapters specifically dedicated to the Judiciary. Yet, this chapter of the CNV report does not fully acknowledge the important role of legal and political mobilization enacted by these civil society actors (see CNV 2014, Vol. 1, Book II, Chapter 17). In fact, similarly to the 2007 CEMDP report, the families of the disappeared and former political prisoners are portrayed as "victims," not as political subjects, let alone activists. Even though not all victims engage in politics and are activists, there are former political prisoners who have continuously engaged in activism after the end of the dictatorship, and there are families of the disappeared who have become activists involved in varying causes, including the struggles for memory, truth, and justice, as illustrated below by the legal actions

initiated by members of the NGOs *Grupo Tortura Nunca Mais* in Rio de Janeiro (GTNM/RJ) and *Comissão de Familiares de Mortos e Desaparecidos Políticos* in São Paulo (CFMDP).

LEGAL MOBILIZATION IN STRUGGLES FOR MEMORY, TRUTH, AND JUSTICE

Before addressing the main legal actions initiated by nonstate actors in their struggles for memory, truth, and justice in Brazil, I shall present the approach to legal mobilization that is used in this chapter to shed light on studies of transitional justice on the ground and from the margins. Law and society scholarship broadly defines legal mobilization as a variety of practices such as litigation, legal campaigns, lobbying to change laws, rights talk, popular legal education, legal consciousness raising, and so on (McCann 2008). Legal mobilization can involve individual or collective actors. Litigation is just one among many possible dimensions of legal mobilization. The use of courts or litigation can be individual or collective, and might be directly or indirectly linked to social and political mobilization. Legal mobilization in general and litigation in particular can take place at different scales—local, national, transnational.

Reviewing law and social movement scholarship, McCann (2006) refers to the fact that the "process-based approaches to studying law in social movements" emphasize "various contextual factors." As noted by the author, "*Opportunity structures, movement resources, and discursive terrains or legal* consciousness are familiar organizing categories for such analyses. Some of the most interesting and important contributions of scholarship on social movements derive from this attention" (McCann 2006, 25). McCann (2006) observes that the literature on law and social movements has expanded in the United States since the mid-1990s. Even though most research focuses on legal mobilization at the local and national scales, international and transnational legal mobilization has also gained increased attention in studies of law and social movements since the early 2000s.

Going beyond the limits of the nation-state and of individualistic uses of law, Santos and Rodríguez-Garavito (2005) propose an approach that they call "subaltern cosmopolitan legality" to refer to the transnational, counter-hegemonic mobilization of law by social movements in the global South. "Subaltern cosmopolitan legality" is characterized by four expansions of the conception of law and of the politics of legality. First, there must be a combination of political and legal mobilization. In fact, subaltern cosmopolitan legality is a form of political mobilization of law. It presupposes the politicization of the use of law and courts. Legal mobilization, in turn, may involve legal, illegal, and non-legal actions. Second, the politics of legal mobilization

needs to be conceived of at three different scales—the local, the national, and the global, so that the struggles are linked across borders. Third, there must be an expansion of professional legal knowledge, of the nation-state law, and of the legal canon that privileges individual rights. This does not mean that individual rights are abandoned by subaltern cosmopolitan politics and legality, even though there is an emphasis on collective rights. Finally, the time frame of the legal struggle must be expanded to include the time frame of the social struggle that serves to politicize the legal dispute. This means that the social conflicts are conceived of as structural problems related to capitalism, colonialism, patriarchy, authoritarian political regimes, and so on (Santos 2005, 30).

The legal defense of leaders and causes of social movements by "popular advocacy" in Brazil is an example of the political mobilization of law. This can be illustrated by the struggles for agrarian reform and counter-hegemonic globalization waged by the Movement of Landless Rural Workers (Santos and Carlet 2010). The so-called "strategic litigation" (*litígio estratégico*), carried out in Latin America by human rights NGOs that specialize in litigation to defend a cause, is also an example of the political mobilization of law that can go beyond the limits of the nation-state (Cardoso 2012). The "transnational legal activism" practices by NGOs and social movement actors that use the Inter-American system of human rights to pressure states to promote legal and policy changes at the domestic level might also serve as an example of subaltern cosmopolitan legality (Santos 2007).

The legal actions initiated by families of the disappeared and former political prisoners illustrate practices of local and transnational legal mobilization that gain a political meaning, even if these actors do not specialize in the "strategic" use of courts and do not fight for the causes of others. They fight for their own individual rights and rely on the support of attorneys and/or NGOs. Yet, many times their individual struggles are linked to larger social and political mobilizations (Teles 2005; 2010; Santos 2007; 2010). The legal mobilization and subaltern cosmopolitan legality approaches are useful to understand and make sense of these legal actions. These actions depend on the material and emotional resources available to the litigants, and influence the level of their rights consciousness to demand "memory, truth, and justice." Not all families of the disappeared and former political prisoners engage with legal mobilization. Not all who initiate legal actions view themselves as "political actors" and "activists." But there are groups of families of the disappeared and former political prisoners who have continuously struggled for justice and social change since the dictatorship, and there are some who have become activists in the collective struggles for the rights to memory, truth, and justice.

This chapter does not intend to discuss the frames and the outcomes of legal actions, but mainly to show that this type of legal mobilization practice

existed before and after the Amnesty Law of 1979, which marked the beginning of the long "transition" from military to civilian rule in 1985. Contrary to a vision of separated "phases" of transitional and post-transitional justice, the existence of these legal actions illustrates continuity in struggles for memory, truth, and justice. Nonstate actors have made accountability claims before and after the so-called "transition." And the new legal and political opportunities and contexts have allowed for the emergence of new legal actions initiated by a pro-accountability group of federal prosecutor officers. New civil society and state actors have also joined the pro-accountability cause, as noted by Abrão and Torelly (2013). Moreover, some of these actors, such as the movement called *Levante Popular da Juventude*, have enacted legal mobilization practices outside of courts (e.g., *escrachos*) and in coordination with groups of families of the disappeared.[9]

Transnational and Local Legal Actions Against the State (1970s–1980s)

In her approach to "post-transitional justice" in Latin America, Collins (2010) argues that the strategies and frames to articulate rights claims to memory, truth, and justice have to be examined in each particular context. Indeed, then and now, as noted by legal mobilization scholars (McCann 2006), legal actions are shaped by the legal and political opportunities and contexts in which they take place. According to Collins (2010, 44), the legal actions initiated in Latin America before transitions might have been primarily intended "to expose HRV patterns, to reduce or end ongoing abuse, or to protect detained individuals via legal injunctions or international publicity."

In contrast with Collins' (2010) argument about possible differences between the goals of legal actions before and after transitional periods, this chapter shows that in the case of Brazil there are continuities in nonstate actors' struggles for memory, truth, and justice. In the early 1970s, both local and transnational legal actions were initiated by families of the disappeared and/or by relatives of political prisoners. The repressive political context and the overall lack of access to domestic courts required the transnationalization of legal action. At the time, several petitions denouncing arbitrary detentions and practices of torture and political deaths committed by state agents were sent to the Inter-American Commission on Human Rights (IACHR). Most cases ended up being dismissed by the IACHR (Teles 2005; 2010; Santos 2009; 2010). Yet, families of the disappeared and former political prisoners continued to struggle for the rights to memory, truth, and justice at the domestic level and used the courts according to the resources and legal opportunities available at the time.

Table 3.1. Local legal actions against perpetrators (mostly the state), by families of the disappeared and former political prisoners, 1970s and 1980s[a]

Case	*Year of petition*	*Type of legal action*	*Complainant(s)*	*Year and content of decision on merit*	*Last decision on appeals or current status*
Mãos Amarradas (Hands Tied Up) Case (Case n. 88.0009436-8, Federal Court of Rio Grande do Sul)	1973	Civil legal action against the state and agents of the state, demanding reparations for moral and material harms due to the death of Manoel Raimundo Soares.	Elizabeth Challup Soares (wife) – she died in June 2009, but her daughter can replace her in the legal action (Teles 2010; CNV 2014).	2000 – Decision found the state responsible for death and torture of the victim, condemning the state to pay reparations. State agents were excluded because the complainant withdrew the charges against them.	Civil Appeal n. 2001.04.01.085202-9/RS, decided by the Federal Regional Court in 2005, confirming the original decision. However, as of December 10, 2014, the state had not paid reparations yet (CNV 2014).
Vladimir Herzog Case (Case n. 136/76, Federal Court of São Paulo)	1976	Civil legal action against the state, requesting declaration of civil responsibility, not demanding financial reparations.	Clarice Herzog (wife) and two sons	1978 – Decision in favor of the complainants, declaring civil responsibility of the state for the "death and torture" of journalist Herzog.	Last decision on appeal in 1994, maintaining the original decision.
Manoel Fiel Filho Case (Case n. 0129866-13.1979.4.03.6100, Federal Court of São Paulo)	1978	Civil legal action against the state, demanding financial reparations.	Thereza de Lourdes M. Fiel (wife) and daughters	1981 – Decision in favor of complainants, ordering the state to pay reparations due to arbitrary arrest and torture leading to death of the union leader Manoel Fiel Filho.	Last decision on the appeal in 1987, confirming the original decision, except the payment for "moral harm."
Mário Alves de Souza Vieira Case (Case n. 2678420, Federal Court of Rio de Janeiro)	1979	Civil legal action against the state, demanding recognition of civil responsibility but not financial reparations.	Dilma Borges Vieira (wife) and daughter, Lúcia Caldas Vieira	1981 – Decision in favor of complainants	Civil appeal decided in 1987, confirming the original decision that found the state responsible (civil) for the arbitrary arrest, death, and disappearance of the victim.

Raul Amaro Ferreira Case (Case n. 241.0087/99, Federal Court of Rio de Janeiro)	1979	Civil legal action against the state, demanding recognition of civil responsibility but not financial reparations (CEMDP 2007, 173).	Mariana Lanari Ferreira (mother)	1982 - Decision in favor of complainant	In 1994, decision on the last appeal confirmed the first decision; the state was held responsible for the arbitrary arrest, torture, and death of Raul Ferreira.
Inês Etienne Romeu Case (1) (Case n. 0000166-68.1981.8.19.0042, Civil Court of Petrópolis)	1981	Civil legal action against the owner of a clandestine torture center known as "Casa da Morte" (Death House, a clandestine torture center), demanding declaration of civil responsibility.	Inês Etienne Romeu, the only survivor of the "Death House"	1981 – Decision against complainant, not recognizing responsibility, alleging that the owner of the house did not have knowledge of what was happening in the house (CNV 2014, 954).	Inês Romeu also reported the crimes to the Bar Association. The Federal Council of the Bar Association and the Brazilian Press Association requested an investigation by the Council for the Defense of the Rights of Human Beings in the Ministry of Justice, which closed the case without investigation (case MJ 7252/1981, cited in CNV 2014).
Araguaia Guerrilla Case (Case n. I-108/83, Federal Court of the Federal District of Brasília)	1982	Civil legal action against the state, demanding information allegedly in possession of the Army on the disappearance of guerrilla members; requested the localization of their remains, and the right to bury them.	22 relatives of disappeared members of the Araguaia Guerrilla movement	2003 – Decision on the merit in favor of complainants	In 2007, after a number of appeals, the final decision confirmed the 2003 decision.
Ruy Frazão Soares Case (Case n. 10.980-0, Federal Court of Pernambuco)	1983	Civil legal action against the state, demanding declaration of civil responsibility, not financial reparations.	Felicia Moraes (wife) and Henrique Ruy	1991 – Decision declared state responsible for arbitrary arrest, death and disappearance of Ruy F. Soares.	After a series of appeals, the case was finally decided in 2002, confirming the first decision.

[a] This table draws on data cited in Teles' thesis (2005) and on the websites of the Federal Courts where each legal action was initiated. I am grateful to Crimeia Schmidt de Almeida, survivor of the Araguaia Guerrilla massacre and founding member of the CFMDP, for providing me with access to her personal archive and for making copies on CDs of the legal documents concerning this case in the Brazilian courts as well as other relevant documents kept in her archive.

As table 3.1 indicates, the main local legal actions initiated in the 1970s and 1980s targeted the state and demanded civil accountability for the arbitrary detentions, torture and political deaths, and forced disappearances.[10] These legal actions started during the military regime. All of them were initiated by families of the disappeared, former political prisoners, or relatives of political prisoners tortured and killed by the repressive state. All but two—the *Mãos Amarradas* (Tied Up Hands) and the Inês Etienne Romeu cases—were against the state, not against individuals and/or state agents of repression. The complainants in all of these legal cases sought the courts to have the rights to "truth," "memory," and "justice" (civil accountability) recognized. Only one case—the *Mãos Amarradas*—demanded financial reparations in addition to the recognition claims of truth, memory, and civil accountability.

It is important to note that the *Mãos Amarradas* case and two other legal actions (Herzog and Fiel Filho cases) were initiated before the Amnesty Law of 1979. The *Mãos Amarradas* case was filed in 1973 in the state of Rio Grande do Sul by Elizabeth Soares, the wife of the victim Manoel Soares, a former military officer who was killed by the state due to his political position against the regime. His body was found in a river with his hands tied up to his back, hence the naming of the case as "Tied Up Hands." Until recently, this case had not attracted any social and political attention (Teles 2010). According to Teles (2010), the complainant was not connected to other families' struggles for truth, memory, and justice. That is why the pattern of her isolated legal action was unique. Her case is the only one from that period that demanded state and individual civil responsibility, as well as reparations. Yet the complainant ended up withdrawing the charges against individual state agents, as indicated in table 3.1.

The Herzog case, although not the first, received at the time large support from social movements and human rights organizations, including the groups of mothers and families of the disappeared (Moraes 2006, 15).[11] Vladimir Herzog was a well-known journalist living in the city of São Paulo. In October 1975, he was arbitrarily arrested, submitted to torture and killed in the São Paulo station house of DOPS-*Departamento de Ordem Política e Social* (Department of Political and Social Order, an organ of the army). His death sparked widespread social mobilization that attracted great media attention. In 1976, his wife, Clarice Herzog, and their two sons filed a civil legal action against the state, demanding the judicial recognition that the victim had not committed "suicide," contrary to what his death certificate indicated, but rather that the state was responsible for his death as a result of torture. No financial reparation was demanded. In 1978, the decision on the merit was published, favoring the complainants. This was an important and courageous decision in face of the repressive context in which it occurred. This decision was made by a young judge then appointed to preside over this case in lieu of an elder judge who was forced to retire due to the armed forces' suspicion

that the original judge was going to decide against the state. This unprecedented ruling, holding the state responsible for the death of the journalist as a result of torture, was widely covered by the media and challenged the legitimacy of the military regime. Yet, Herzog family's struggle for justice did not end in 1978. The state appealed to the superior courts, as it did in all of the other cases where the judges decided against the state, and the case ended only in 1994. The family continued to fight in courts to change Vladimir Herzog's death certificate until 2013. In addition to the struggle for civil accountability, in 2009 the family and their human rights NGO allies also decided to demand in court the criminal accountability of state agents who tortured and killed Herzog, as indicated in table 3.2.

Immediately after the enactment of the 1979 Amnesty Law, families of the disappeared and/or former political prisoners initiated new legal actions. All were against the state and all demanded the recognition of state's civil accountability. The Araguaia Guerrilla case, initiated in 1982 by twenty-two relatives of guerrilla members who disappeared as a result of state repression, requested that a report allegedly in the hands of the Army be disclosed to reveal information on the circumstances of the deaths and disappearances of the victims. In addition to such demand for the "truth," this legal action also intended to restore the "history" of the Araguaia Guerrilla movement and the "memory" of the victims. And it demanded civil accountability of the state. This legal action is unique because of its collective initiative (twenty-two complaintants). It is a clear example of the continued struggle for memory, truth and justice waged by families of the disappeared. This is also a landmark case that has served to pressure the Brazilian state to do the work of memory, truth, and (civil) justice since the early 1980s (Teles 2005; Santos 2010). This legal case was pending in the domestic courts until 2007, as noted in table 3.1, and until the end of 2014 the state had not yet fully complied with the judge's decision.

The fact that all the legal actions initiated in the 1970s and 1980s did not demand criminal accountability does not mean that there was no consciousness of the right to admission of criminal responsibility for serious human rights violations. The 1979 Amnesty Law was a result of social and political mobilization waged by various social movements and clandestine political parties. At that time the *Comissão de Familiares de Mortos e Desaparecidos Políticos* (Commission of Families of the Disappeared and Killed for Political Reasons, or CFMDP), the *Grupo Tortura Nunca Mais-São Paulo* (Group Torture Never Again-São Paulo, or GTNM/SP), and the *Comitê Brasileiro pela Anistia* (Brazilian Amnesty Committee, or CBA) were formed. These groups held different views regarding civil and criminal accountability of state agents. The CFMDP and the GTNM/SP, which remain active nowadays, have always defended the pursuit of justice (civil and criminal), whereas the CBA, which ended soon after the Amnesty Law was enacted, did not

support criminal accountability claims. Thus, there were some groups that did articulate a political discourse in favor of criminal accountability in the 1970s (Atencio 2014, 86). At the end of the 1970s, the project *Brasil: Nunca Mais* was created. This project report, published in 1985, documented thousands of cases of torture based on copies of trials of political prisoners sentenced by the Military Courts. But this report did not advocate criminal accountability, considering it to mean "revenge," not "justice" (Arquidiocese de São Paulo 2003, 26). In the mid-1980s, new organizations composed of families of the disappeared were created, such as *Grupos Tortura Nunca Mais* (Torture Never Again Groups, or GTNM) in the cities of Rio de Janeiro, Recife, and Belo Horizonte. The GTNM of Rio de Janeiro is still active and continues to defend the rights to memory, truth, and justice, including civil and criminal accountability. In 1988, in the context of redemocratization and under a civilian regime, the National Constituent Assembly enacted the new Brazilian Constitution, which incorporated important demands of social movement actors for the recognition of new rights. As Abrão and Torelly (2011) point out, the new social movements did not continue to support the struggle for memory, truth, and justice waged by families of the disappeared and former political prisoners. But these families did not give up in their struggle.

Transnational Legal Mobilization in the Context of Redemocratization (1990s)

In the 1990s, families of the disappeared and former political prisoners initiated only two new legal actions. But this does not mean that legal mobilization ended. In fact, most of the legal actions filed in the 1980s continued for more than twenty years, as illustrated by the Araguaia Guerrilla case depicted in tables 3.1 and 3.2. These legal cases served as complementary weapons for the social and political mobilization waged by families of the disappeared and former political prisoners. The most important case was the transnationalization of the legal action relating to the Araguaia Guerrilla movement. In 1995, families of the disappeared during the Araguaia Guerrilla were able to forge alliances with human rights NGOs and sent this case to the IACHR.

Table 3.2. Transnational and local legal actions against the state, by families of the disappeared, human rights NGOs, and former political prisoners, 1990s[a]

Cases	*Year of petition*	*Type of legal action*	*Complainant(s)*	*Year and content of decision on merit*	*Last decision on appeals or current status*
Araguaia Guerrilla Case (transnational) (Case 11552 - Gomes Lund and Others versus Brazil)	1995	Petition sent to the Inter-American Commission on Human Rights.	CEJIL-Center for Justice and International Law, Human Rights Watch, Comissão de Familiares de Mortos e Desaparecidos Políticos (CFMDP), Grupo Tortura Nunca Mais-RJ (GNTM/RJ).	2001 – IACHR published the admissibility report (n. 33/ 01).	IACHR sent the case to the IACtHR in 2009. The IACtHR condemned the Brazilian state in 2010.
Inês Etienne Romeu Case (2) (Case n. 0027857-69.1999.4.03.6100, 17th Federal Civil District Court of São Paulo)	1999	Civil legal action against the state, demanding declaration of civil responsibility not financial reparations.	Inês Etienne Romeu (only survivor of a clandestine torture center known as "Casa da Morte" (Death House) in Petrópolis, near the city of Rio de Janeiro).	2003 – Decision in favor of complainant found the state responsible for her arbitrary arrest and torture.	The case was appealed by the state. The General Legal Consultant of the state recommended that the state withdraw the appeal. The case was closed in 2007.

[a] Data on the Araguaia Guerrilla case in the IACHR was generously provided by Crimeia Schmidt de Almeida. Information on this case is also based on interviews that I conducted with petitioners, attorneys, and state officials in São Paulo, Rio de Janeiro, and Brasília, and with a legal officer in the IACHR in Washington DC. Data on the Inês Etienne Romeu case was gathered from the website of the Federal Court of São Paulo and from the 2014 CNV final report.

The transnationalization of the Araguaia Guerrilla case must be situated within the political and legal opportunities and context in which it is embedded. This context favored the development of the mobilizing strategy to forge *transnational* legal alliances between the families of the disappeared and human rights NGOs. Brazil ratified the American Convention on Human Rights in 1992 and recognized the jurisdiction of the IACtHR in 1998. In the mid-1990s, domestic human rights NGOs began to develop the strategy of transnational legal activism (Santos 2007). The Araguaia Guerrilla case pending in the Brazilian courts did not reach a decision on merit until 2003 (see table 3.1). Thus, it was necessary to resort to transnational advocacy networks to provoke a "boomerang effect" (Keck and Sikkink 1998).

The law on access to public documents was indirectly under dispute in the legal battle over the Araguaia Guerrilla case. In 1991, then President Fernando Collor de Melo signed the Law 8,159/1991, establishing the National Policy on Public Archives. This law classified the degrees of secrecy for public documents and the statute of limitations for declassifying them. Documents that threatened "National Security" were classified as "top secret" (*alto grau de sigilo*). This law was an impediment to accessing information on the dictatorship that was in the hands of the army. The presidency of Fernando Henrique Cardoso (1995–2002) also established laws on access to public documents and extended the statutes of limitation for declassifying documents considered "top secret." The Lula government (2003–2010) maintained the same approach and established new decrees to extend the statute of limitation for declassifying those documents. Thus, the transnationalization of the Araguaia Guerrilla case was an attempt to change this kind of policy and gain access to "truth and justice." The petitioners and their allies used this case to mobilize for a new legislation on access to public information. In 2011, during Dilma Rousseff's presidency, a new legislation was enacted to grant citizens the right to ample and free access to public information (Law 12.527/2011). This law was signed together with the law that determined the creation of the CNV (Law 12.528/2011). Both laws were the result of a long-term struggle waged by pro-accountability actors, including old and new nonstate and state actors.

The CEMDP, as noted above, was created by then President Cardoso in 1995 and established an important transitional justice measure focusing on financial reparations. However, the Araguaia Guerrilla case was sent to the IACHR *before* the creation of the CEMDP. The families who were fighting for the rights to memory, truth and justice did not restrict their demands to financial reparations. Indeed, the families continued their social and legal mobilizations, as demonstrated by the dossier and the book they organized at the time to challenge the limits of the reparation commission created by Cardoso. The "Dossier of Political Deaths and Disappearances since 1964" (*Dossiê dos Mortos e Desaparecidos Políticos a Partir de 1964*) was pub-

lished in 1995 and was based on several years of research by nonstate actors (CFMDP et al. 1995). In the mid-1990s, Janaína de Almeida Teles, who holds a Ph.D. in History and is a daughter of former political prisoners and niece of an Araguaia Guerrilla survivor, organized a conference at the University of São Paulo bringing together scholars, attorneys and activists to challenge the limited scope of the new reparation commission. This conference resulted in the publication of the book, *Mortos e Desaparecidos Políticos: Reparação ou Impunidade?* (Political Deaths and Disappearances: Reparation or Impunity?) (Teles 2001).

In addition to these publications and other social mobilization practices, organized groups of families of the disappeared and former political prisoners looked for new allies, domestic and international, inside and outside of the state. For instance, they forged an alliance with CEJIL-Center for Justice and International Law, an international human rights NGO that specializes in "strategic litigation" in the Inter-American system of human rights. In alliance with CEJIL and the international NGO Human Rights Watch, the CFMDP and GTNM/RJ sent a petition on the Araguaia Guerrilla case to the IACHR in 1995, as noted in table 3.2. At the domestic and governmental level, they also sought to establish alliances with politicians, such as Miguel Arraes, then governor of Pernambuco who had been in exile. Arraes sponsored the publication of the dossier in 1995 (CFMDP et al. 1995). They also looked for the support of members of the Federal Public Attorney Office (*Ministério Público Federal*, or MPF) of Rio de Janeiro and São Paulo, as federal prosecutor Marlon Weichert reported to me in an interview conducted in São Paulo on August 15, 2005. It was thanks to the provocation by the GTNM/RJ and the CFMDP that federal prosecutors learned about the social struggles for access to public information, the search for the remains of the disappeared in the Araguaia Guerrilla, and the search for and identification of the remains that had been found in a clandestine pit in the Perus Cemetery in São Paulo. In 1999, a group of federal prosecutors began to study legal strategies to defend the rights to memory, truth, and justice in relation to the crimes committed by the military regime, and they then initiated the first public civil legal actions against the state (Fávero 2009).

New Legal Actions in the Era of Individual Accountability (since 2005)

In the 2000s, a new international legal and political context conducive to individual accountability opened up the path for new legal actions initiated by two families (the Teles and Merlino families) against one state agent, namely Colonel Carlos Alberto Brilhante Ustra. This colonel was accused of torture. He had been the head of the Center of Operations for Internal Defense (*Centro de Operações de Defesa Interna*, or DOI-CODI) in São Paulo,

from 1970 to 1974. These legal actions are important because they focus on *individual* liability, not on *state* accountability. Both are civil legal actions, as indicated in table 3.3.[12]

The political and ethical significance of these legal actions is well illustrated by the words of Maria Amélia Teles, one of the complainants in the Teles family case. As she writes,

> This legal action is declaratory in nature, we do not demand any financial reparations, nor punishment. The condemnation of Colonel Ustra is in the moral and ethical realm of justice. The recovering of history has a practical function: to repudiate hideous facts, to recover the credibility of society, transforming it into an active force, capable of following new paths and blocking backward movements. *This is denied to the Brazilian people. We came out of* a dictatorship without investigating the responsibilities for the torture, deaths, kidnapping and forced disappearances committed by agents of the Brazilian state. Brazilian people have the right to know who kidnapped, tortured and eliminated the lives of militants who dared to fight against the dictatorship. It is not possible to compromise with the practice of torture. Confronting it is a matter of justice, not a private issue. The legal action of the Teles family is an action of the Brazilian people.[13]

The new legal actions against Colonel Ustra were initiated in the context of favorable political and legal opportunities. The IACtHR ruled on cases that established a firm jurisprudence considering as "self-amnesty" the amnesty laws that were in effect in several countries in Latin America.[14] In 2003, Argentina revoked its laws of "Punto Final" (Full Stop Law) and of "Obediencia Devida" (Law of Due Obedience). This immediately sparked a number of new trials, and since then hundreds of state agents have been convicted and sentenced by Argentine courts for crimes against humanity.

Given this favorable international legal context, it is not surprising that the Teles family was able to win their case at all courts and levels of litigation, as indicated in table 3.3. In 2008, the judge presiding over this case ruled in favor of three of the five family member complainants. In 2012, the Superior State Court of São Paulo denied the appeal filed by Colonel Ustra. The day of this ruling, Crimeia Schmidt de Almeida, one of the winning complainants, made the following statement in celebration with the crowd that mobilized in front of the court: "This victory is not only of the Teles family, it's of the whole Brazil."[15] On December 9, 2014, one day before the public release of the CNV final report, the Superior Court of Justice based in Brasília, the federal capital, rejected again the last appeal filed by Colonel Ustra.

Table 3.3. Local and transnational legal actions against state agents, by families of the disappeared, former political prisoners, and human rights NGOs, since 2005

Case	*Year of petition*	*Type of legal action*	*Complainant(s)*	*Year and content of decision on merit*	*Last decision on appeals or current status*
Teles Family Case (Case n. 583002005202853-5, 23rd Civil District Court of São Paulo)	2005	Civil legal action against state agent Colonel Carlos Alberto Brilhante Ustra, demanding declaration of his civil responsibility for torture.	Former political prisoners Crimeia Schmidt de Almeida, Maria Amélia de Almeida Teles and César Augusto Teles, and the children of Maria Amélia and César, Janaína Teles and Edson Teles.	2008 – Decision declared Ustra responsible for the practice of torture, causing moral harms and physical injury to three petitioners (excluding the children Janaina and Edson).	2012 – State Superior Court decided unanimously against the appeal by Ustra. Another appeal was presented to the Superior Court of Justice and the majority of justices (3 against 2 votes) decided against Ustra on December 9, 2014.
Merlino Family Case (1) (Case n. 583.00.2007.241711-9, State Court of São Paulo)	2007	Civil legal action against state agent Colonel Carlos Alberto Brilhante Ustra, demanding declaration of his civil responsibility for torture and death of Merlino.	Family of Luiz Eduardo da Rocha Merlino (Angela Maria Mendes de Almeida and Regina Maria Merlin de Almeida).	2008 – Decision in favor of complainants.	Appeal decided in 2008 in favor of Ustra. The court considered that the family should request reparations due to moral harms.
Herzog Case (transnational) (Petition P-859-09)	2009	Petition sent to the Inter-American Commission on Human Rights, demanding criminal responsibility of state agents for	Center for Justice and International Law-CEJIL, Inter-American Foundation for the Defense of Human Rights (FIDDH), Center Santo Dias of the Archbishop of São	2010 – IACHR published the admissibility report (n. 80/12).	Pending decision on the merit.

		arbitrary detention, torture, and death of Vladimir Herzog.	Paulo, and Tortura Nunca Mais/São Paulo.		
Merlino Family (2) (20th Civil District Court of the São Paulo Central Forum)	2010	Civil action against state agent Colonel Carlos Alberto Brilhante Ustra demanding financial reparations for moral harm.	Family of Luiz Eduardo da Rocha Merlino (Angela Maria Mendes de Almeida and Regina Maria Merlin de Almeida)	2012 – Decision in favor of complainants.	Pending appeal.

It is important to recall that even though the Brazilian Amnesty Commission (CA) had been created in 2001, it became more effective only after 2007, as noted above. Thus, this commission did not influence nonstate actors to use the courts in 2005 as a strategy to seek civil accountability of state agents. In fact, it is more likely that the legal actions initiated by the Teles and Merlino families served to pressure the state. As Janaína de Almeida Teles writes, "The novelty and the paradigmatic character of this action provoked the restarting of the debate on torture and on the scope of the Amnesty Law of 1979."[16] Furthermore, only after 2008 did a group of federal prosecutors begin to take legal actions in pursuit of individual and state civil and criminal accountability (Ministério Público Federal 2013; 2014).

At the transnational level, CEJIL and other human rights NGOs sent a petition in 2009 on behalf of the Herzog family to demand criminal accountability of state agents for the torture and killing of the journalist Vladimir Herzog.[17] In the same year, the CFMDP published a new edition of the dossier on the deaths and political disappearances (Almeida et al. 2009). It was also in 2009 that the Araguaia Guerrilla case was sent by the IACHR to the IACtHR. Pressures coming from the families of the disappeared and their allies sparked the IACHR initiative. In response to CEJIL's request, in 2008 the IACHR held the thematic session entitled "The Amnesty Law as an Impediment to Justice in Brazil" (*A Lei de Anistia como Obstáculo à Justiça no Brasil*).

At the same time, sectors of the government, such as the CA, the SDH and the pro-accountability group of federal prosecutors, began to promote public debates on the limits of the 1979 Amnesty Law. For example, in the first semester of 2008, the CA and the SDH held a public hearing on the "Limits and Possibilities for Legal Responsibility of Agents Who Violated Human Rights During the State of Exception in Brazil" (*Limites e Possibilidades para a Responsabilização Jurídica dos Agentes Violadores de Direitos Humanos durante o Estado de Exceção no Brasil*). This was an unprecedented initiative by state actors to bring to the center of the governmental agenda a public debate on the revision of the 1979 Amnesty Law. This public hearing sparked an internal division within the Executive branch of the state. On one side were the pro-accountability actors, such as the Ministry of Justice, the CA, the SDH, and the group of federal prosecutors, who defended the non-application of the Amnesty Law to perpetrators of serious human rights violations. On the other side were the con-accountability actors, such as the General Attorney Office and the Ministry of Defense, who advocated that the Amnesty Law be applied not only to the "political crimes" committed by dissidents of the authoritarian regime, but also the "connected crimes" (interpreted as crimes perpetrated by agents of the state), as prescribed in the provisions of the Amnesty Law. This political division within the executive power became even more accentuated when President Lula signed the third

National Human Rights Plan, which included for the first time a thematic area dedicated to the "right to truth and memory," and determined the creation of a National Truth Commission.

Another important actor that joined the pro-accountability cause in 2008 was the Brazilian Bar Association, which initiated a legal action before the Federal Supreme Court—the ADPF-Non-Compliance Action of the Fundamental Principle no. 153, demanding that the Court interpret the Amnesty Law in a manner that would suspend the application of the law to state agents who committed serious violations of human rights. The Federal Supreme Court ruled this action inadmissible and confirmed, by seven to two votes, the validity of the 1979 Amnesty Law. This certainly contributed to the 2010 decision by the IACtHR, condemning Brazil in the Araguaia Guerrilla case.[18] The IACtHR decided unanimously that the crimes committed by the Brazilian state to repress the Araguaia Guerrilla—such as forced disappearance, extrajudicial summary executions, and torture—constituted "crimes against humanity." And decided in line with its established jurisprudence on "self-amnesty" laws that,

> Par. 147—Amnesties or similar forms have been one of the obstacles alleged by some States in the investigation, and where applicable, punishment of those responsible for serious human rights violations. This Court, the Inter-American Commission on Human Rights, the organs of the United Nations, and other universal and regional organs for the protection of human rights have ruled on the non-compatibility of amnesty laws related to serious human *rights violations with international law and the international obligations of* States.[19]

This unprecedented decision has helped to strengthen the pro-accountability mobilization practices in Brazil. The IACtHR made clear that the creation of a national truth commission would not be sufficient to address the serious human rights violations committed by the Brazilian state and its agents in the repression of the Araguaia Guerrilla. This emblematic case is an example of enduring legal and political mobilization practices by nonstate actors since the early 1980s. This case has also helped to redefine the agenda of certain state actors, such as the reparation and truth commissions and the group of federal prosecutors who have been taking legal initiatives to force the Brazilian state to fully comply with this international decision (Ministério Público Federal 2014). Yet, Brazilian media, state sectors, and civil society actors are divided about the validity of this decision and Brazil's duty to comply with it (Cardia, Possas, Blotta, and Bastos 2014).

CONCLUSION

As demonstrated throughout this chapter, the case of Brazil challenges the concept of "post-transitional justice." Legal actions have been initiated by domestic nonstate actors since the 1970s. They are part of a larger struggle for the rights to memory, truth, and justice. These actions have preceded and succeeded each of the three phases of transitional justice described by Abrão and Torelly (2011; 2013). Thus, the history of transitional justice politics needs to be reread from the margins to account for the multiple processes, actors, and strategies of struggle that occur within particular political and social contexts. More recently, state actors, such as federal prosecutors, have also initiated a new wave of civil and criminal legal actions against the state and individual state agents. Even though the families of the disappeared and new pro-accountability social movements have been critical of the state, there have been mutual exchanges of experiences between state and nonstate actors, and some pro-accountability sectors of the state have been more open to incorporate demands from nonstate actors into the governmental agenda on transitional justice. State and civil society actors are not as separated as the literature on transitional and post-transitional justice seems to imply. In addition, both domestic and international forces have shaped the politics of transitional justice in Brazil.

Uncovering legal mobilization practices sheds light on transitional justice politics on the ground and from the margins, helping to legitimize marginalized subjects of history, memory, and justice. Legal mobilization by nonstate actors, as part of larger struggles for the rights to truth, memory, and justice, has been marginalized in official accounts of transitional justice in Brazil. Families of the disappeared and former political prisoners are portrayed mainly as "victims," not as activists and political subjects. Yet, these families have been struggling and developing collective strategies to promote justice since the early 1970s. In fact, the legal and political battles over "truth" and "memory" are part of the work of "justice." As noted by James Booth (2006, 128), "In our time, this connection between memory-truth-justice has become, if anything, even more compelling. For one of the goals of the perpetrators of mass crime in this past century has been the obliteration of the memory of the victims." In this sense, "Writing history and doing justice, the labor of historians and of courts, are both forms of memory work" (Booth 2006, 114).

McCann (2008, 35) argues that, "Legal mobilization tactics do not inherently empower or disempower citizens. Legal institutions and norms tend to be Janus-faced, at once securing the status quo of hierarchical power while sometimes providing limited opportunities for episodic challenges to and transformations in that reigning order." Indeed, in the case of Brazil, legal mobilization practices by nonstate actors face many challenges and cannot be

sustained without the support of domestic and international allies inside and outside of governmental institutions. As Teles (2010, 280) points out, the legal actions take too long; the judicial outcomes are often limited and frustrating for the families, and may have demobilizing effects on their organizations; the economic and emotional costs of initiating a legal action are huge. It is no accident that the number of legal actions by nonstate actors is not significant in comparison with the recent legal actions undertaken by the pro-accountability group of federal prosecutors. The CNV's recommendations to the Brazilian government regarding the pursuit of civil and criminal accountability will probably spark a new wave of legal actions initiated by federal prosecutors.

Finally, it is important to note that the "memory-truth-justice" work carried out by the families of the disappeared and former political prisoners is not the only narrative that has been placed at the margins. The meaning of "political deaths and disappearances," for example, changes over time. The 2014 CNV report recognizes that indigenous groups, peasants, and LGBT people were subjected to persecution for political reasons during the military dictatorship. Yet, the CNV was unable to confirm or "prove" the scope of such political repression. Thus, the uncovering of the history of serious human rights violations and struggles for truth, memory and justice in relation to the military dictatorship is not over in Brazil. The politics of truth-memory-justice will continue. And legal mobilization will probably continue to be used as a strategy in the struggles for memory, truth, and justice.

NOTES

I am grateful to the editors of this book and Marcelo Torelly for their careful and constructive comments on earlier drafts of this chapter. Special thanks are due to the members of the Teles family and federal prosecutor Marlon Weichert for our ongoing conversations and for providing me with information and copies of documents relating to their legal actions. I am also grateful to the members of human rights NGOs and state agents, especially Marcelo Torelly, for sharing information on their work. Data collection on the legal cases addressed in this chapter was conducted in 2013 and 2014. Some data and ideas also draw from a research project on transnational legal mobilization and human rights in Brazil, particularly on the Araguaia Guerrilla case, carried out in 2006–2010, funded by the Faculty Development Fund and the Jesuit Foundation at the University of San Francisco (Santos 2007; 2009; 2010).

1. The term "political opportunity structure" is used in the social movement literature to refer to the macro, external, institutional structure and socio-political context in which social movements are embedded (McAdam, McCarthy, and Mayer 1996; Benford and Snow 2000). The term "legal opportunity structure" is generally used in the law and social movement literature "to describe both the stable and contingent factors that influence whether social movements are able and willing to pursue their goals through the courts." (Vanhala 2012, 527). The factors mostly addressed by "legal opportunity structure" scholars include procedural rules, material resources, legal resources, judicial receptivity of claims, cultural frames, and the presence of allies or counter-mobilizing forces (Vanhala 2012). Given that "structural" features are many times "contingent," some authors prefer the terms "political opportunities" and "legal opportunities" (Hilson 2002). This chapter builds on this critical literature.

2. The CEMDP was created in 1995 (Law 10,559/02). The CA was created in 2001 (Law 10,559/02). These two reparation commissions were established under the presidency of Fernando Henrique Cardoso, elected for two terms (1995–1998 and 1999–2002). The CNV was created in 2012 (Law 12,528/11) under the presidency of Dilma Rousseff, also elected for two terms (2011–2014 and 2015–2018).

3. In an e-mail message to the author on August 7, 2013, Marcelo Torelly revealed that in 2008 the CA began to negotiate a program with the Brazilian Agency of Cooperation of the Foreign Relations Ministry (*Agência Brasileira de Cooperação do Ministério das Relações Exteriores*) and the United Nations Development Program (UNDP). The goal was to create an international cooperation program on transitional justice to advance this agenda in Brazil. The program was signed in December of 2008, titled "Cooperation for the International Exchange, Development, and Expansion of Transitional Justice in Brazil" (*Cooperação para o Intercâmbio Internacional, Desenvolvimento e Ampliação da Justiça de Transição no Brasil*), and received the number BRA/08/021 in the United Nations' Atlas system.

4. In November 2008, the CA organized the first "International Seminar on Transitional Justice," held at the State University of Rio de Janeiro, in partnership with CLACSO-Latin American Council of Social Sciences. I was invited to participate in this seminar as presenter and representative of the Center for Social Studies (CES) at the University of Coimbra. The following year, the CA and CES co-organized a seminar on transitional justice, held in Coimbra, which resulted in the publication of a book (Santos et al. 2010). In addition to this event, from 2009 to 2014 the CA organized international seminars at the following universities: University of Carlos III (Spain), Oxford University and King's College (UK), Frankfurt University (Germany), Pablo de Olavide University (Spain), Catholic University of Porto Alegre-PUC (Brazil), as well as Brown University and Columbia University (USA). The CA also engaged in a series of encounters with civil society actors from different countries in Latin America, Africa, and Europe, with the goal of exchanging knowledge and training governmental and non-governmental agents (Marcelo Torelly, e-message to the author, August 7, 2013).

5. This official mandate went beyond the period of the 1964–1985 military regime to dissipate the reactions on the part of the Armed Forces and other state and nonstate actors who oppose any type of transitional justice measures in Brazil. However, once the seven commissioners nominated by President Rousseff initiated their work in the CNV, they decided to restrict their mandate to examining only the period of the military regime corresponding to April 1, 1964, until the end of 1985.

6. This project was initiated in 1979 and concluded in 1985. The goal was to document the practices of torture and the political deaths and disappearances perpetrated by agents of repression during the military regime. The project compiled copies of over 707 trials against political dissidents decided by the Military Tribunal and dozens of cases pending before this tribunal in the period of April 1964 until March 1979 (see Arquidiocese de São Paulo 2003).

7. For these dossiers, see Almeida, Almeida, Almeida, and Lisboa (2009) and CFMDP (1995).

8. In her speech, President Rousseff was moved by the CNV final report and showed strong emotions, certainly accentuated by the fact that she herself had been imprisoned and tortured by agents of repression, as she recounted in her testimony to the CNV, cited in the final report. Yet, her speech also made clear remarks about preserving a "pact of reconciliation." Available at: http://www.brasil.gov.br/governo/2014/12/dilma-recebe-relatorio-final-da-comissao-nacional-da-verdade (Accessed December 20, 2014).

9. The "escrachos" appeared in Argentina and Chile as a public manifestation in the streets (through theater, placing posters, protests, and so on) to denounce perpetrators of serious human rights violation. These public manifestations intend to name and shame, uncover history that is not acknowledged by the courts, and perform the work of memory, truth, and justice through public exposure of torturers. In Brazil, the *Levante Popular da Juventude* has successfully adopted this model of collective legal mobilization outside of courts to expose agents of the state who committed serious violations of human rights during the military dictatorship (Soares and Quinalha 2013).

10. This and the following tables do not intend to list all of the legal actions initiated by nonstate actors. This selection does not intend to be comprehensive but rather exemplary of

emblematic cases and/or of cases that I could find. The data was gathered from the following types of sources: the websites of courts where the cases were initiated, decided, and/or are pending; newspaper and magazine articles (mostly online); academic and official publications on transitional justice and struggles for truth, memory and justice in Brazil; semi-structured interviews and conversations with one family of the disappeared and former political prisoners, attorneys, prosecutors, members of NGOs, and state officials. The interviews and conversations are especially related to the Araguaia Guerrilla case and the Teles family case.

11. The Manoel Fiel Filho case also sparked social mobilization and protests against the military regime. Mário Sérgio de Moraes (2006) argues, however, that the socioeconomic and political background of the victims influenced the different repercussions of the Herzog and the Fiel Filho cases. Vladimir Herzog was a middle-class journalist well known in São Paulo. Manoel Fiel Filho was a working-class union organizer. Herzog's death sparked a wave of protests and mobilization by middle-class intellectuals and students who united to fight for liberal democracy, human rights, and citizenship rights. For them, the meaning of "citizenship rights" did not refer to socioeconomic rights, but rather to political and civil rights.

12. Data on these legal actions can be found in the website of the São Paulo State Court of Justice (http://www.tjsp.jus.br/).

13. Maria Amélia de Almeida Teles, "O Torturador no Banco dos Réus." Available at: http://www2.sinal.org.br/informativos/show_sumula.asp?codigo=43652andtema=andtipo=Randdata=anddt_dia=5anddt_mes=12anddt_ano=2006 (Accessed December 16, 2006. My translation from the original in Portuguese).

14. Among other cases, see Case of Almonacid Arellano et al. versus Chile. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 26, 2006. Series C No. 154, para. 94. Available at: http://www.corteidh.or.cr/docs/supervisiones/almonacid_18_11_10_ing.pdf (Accessed December 10, 2014).

15. Cited in Isabel Harari, "Essa Vitória Não É Só da Família Teles, É de Todo Brasil," *Carta Maior* (August 14, 2012). Available at: http://cartamaior.com.br/?/Editoria/Direitos-Humanos/ percent27Essa-vitoria-nao-e-so-da-familia-Teles-e-de-todo-o-Brasil percent27 percent0D percent0A/5/25677 (Accessed December 15, 2014. My translation from the original in Portuguese.)

16. Janaína de Almeida Teles, "O Torturador no Banco dos Réus: A Ofensa aos Direitos Humanos Não Prescreve." Available at: https://hannaharendt.wordpress.com/2009/11/16/o-torturador-no-banco-dos-reus-a-ofensa-aos-direitos-humanos-nao-prescreve-1/ (Accessed December 18, 2014. My translation from the original in Portuguese.)

17. Cf. Inter-American Commission on Human Rights, Report n. 80/12 (Admissibility), Petition P-859-09, Vladimir Herzog et al. v. Brazil, November 8, 2012.

18. Cf. Case of Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 24, 2010. Available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_219_ing.pdf (Accessed January 6, 2014).

19. Cf. Case of Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 24, 2010. Available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_219_ing.pdf (Accessed January 6, 2014).

SELECTED BIBLIOGRAPHY

Abrão, Paulo, and Marcelo D. Torelly. 2011. "As Dimensões da Justiça de Transição no Brasil, a Eficácia da Lei de Anistia e as Alternativas para a Verdade e a Justiça." In *A Anistia na Era da Responsabilidade: O Brasil em Perspectiva Internacional e Comparada*, edited by Leigh A. Payne, Paulo Abrão, and Marcelo Torelly, 212–49. Brasília: Ministério da Justiça, Comissão de Anistia; Oxford: Oxford University, Latin American Centre.

———. 2013. "Transformaciones del Concepto de Amnistía en la Justicia de Transición Brasileña: La Tercera Etapa de la Lucha por la Amnistía." *Jueces para la Democracia* 77: 95–109.

Almeida, Crimeia Schmidt de, Janaína de Almeida Teles, Maria Amélia de Almeida Teles, and Suzana Lisboa. 2009. *Dossiê Ditadura: Mortos e Desaparecidos Políticos no Brasil, 1964–1985*. São Paulo: IEVE/Imprensa Oficial.

Arquidiocese de São Paulo. 2003. *Brasil: Nunca Mais*. Petrópolis: Vozes, 33a edtion.

Atencio, Rebecca J. 2014. *Memory's Turn: Reckoning with Dictatorship in Brazil*. Madison, WI: The University of Wisconsin Press.

Benford, Robert D., and David A. Snow. 2000. "Framing Processes and Social Movements: An Overview and Assessment." *Annual Review of Sociology* 26: 611–39.

Booth, W. James. 2006. *Communities of Memory, Witness, Identity, and Justice*. Ithaca, NY: Cornell University Press.

Brito, Alexandra B. de, Carmen González-Enríquez, and Paloma Aguilar, ed. 2001. *The Politics of Memory: Transitional Justice in Democratizing Societies*. Oxford: Oxford University Press.

Burt, Jo-Marie, Gabriela Fried-Amilivia, and Francesca Lessa. 2013. "Civil Society and the Resurgent Struggle Against Impunity in Uruguay (1986–2012)." *International Journal of Transitional Justice* 7: 306–27.

Cardia, Nancy, Mariana Thorstensen Possas, Vitor Blotta, and Lucia Elena Arantes Ferreira Bastos. 2014. "A Cobertura da Mídia sobre a Decisão da Corte Inter-Americana de Direitos Humanos no Caso Araguaia: Promovendo Mudança ou Mantendo a Negação?" In *Direitos Humanos Atual*, edited by Inês Virgínia Prado and Flávia Piovesan, 406–49. Rio de Janeiro: Elsevier.

Cardoso, Evorah L. C. 2012. *Litígio Estratégico e Sistema Interamericano de Direitos Humanos*. Belo Horizonte: Editora Fórum.

CEMDP (Comissão Especial sobre Mortos e Desaparecidos Políticos). 2007. *Direito à Memória e à Verdade*. Brasília: Secretaria de Direitos Humanos da Presidência da República.

CFMDP (Comissão de Familiares de Mortos e Desaparecidos Políticos), IEVE (Instituto de Estudo da Violência do Estado), and Grupo Tortura Nunca Mais-RJ/SP. 1995. *Dossiê dos Mortos e Desaparecidos Políticos a Partir de 1964*. Recife: CEPE-Companhia Editora de Pernambuco, Governo do Estado de Pernambuco.

CNV (Comissão Nacional da Verdade). 2014. *Relatório*. Brasília: Comissão Nacional da Verdade. 3 Volumes.

Collins, Cath. 2006. "Grounding Global Justice: International Networks and Domestic Human Rights Accountability in Chile and El Salvador." *Journal of Latin American Studies* 38 (4): 711–38.

———. 2008. "State Terror and the Law: The (Re)judicialization of Human Rights Accountability in Chile and El Salvador." *Latin American Perspectives* 35 (5): 20–37.

———. 2010. *Post-Transitional Justice: Human Rights Trials in Chile and El Salvador*. University Park: The Pennsylvania University Press.

Fávero, Eugênea A. G. 2009. "Crimes da Ditadura: Iniciativas do Ministério Público Federal em São Paulo." In *Memória e Verdade: A Justiça de Transição no Estado Democrático Brasileiro*, edited by Inês Virgínia P. Soares, and Sandra A. S. Kishi, 213–32. Belo Horizonte: Editora Fórum.

Hilson, Chris. 2002. "New Social Movements: The Role of Legal Opportunity." *Journal of European Public Policy* 9 (2): 238–55.

hooks, bell. 1984. *Feminist Theory: From Margin to Center*. New York: South End Press.

Keck, Margaret E., and Kathryn Sikkink. 1998. *Activists beyond Borders: Advocacy Networks in International Politics*. Ithaca, NY: Cornell University Press.

Kobalec, Kobi. 2014. "Memory and Periphery: An Introduction." *Hagar – Studies in Culture, Polity and Identities* 12: 7–22.

Lorde, Audre. 1984. "An Open Letter to Mary Daly." In *Sister Outsider*, 66–71. Freedom, CA: Crossing Press.

Lutz, Ellen, and Kathryn Sikkink. 2001. "The Justice Cascade: The Evolution and Impact of Human Rights Trials in Latin America." *Chicago Journal of International Law* 2 (1): 1–33.

Maeso, Silvia R. 2010. "Política del Testimonio y Reconocimiento en las Comisiones de la Verdad Guatemalteca y Peruana: En torno a la Figura del 'Indio Subversivo'." *Revista Crítica de Ciências Sociais* 88: 23–56.

McAdam, Doug, John D. McCarthy, and N. Zald Mayer. 1996. "Introduction: Opportunities, Mobilizing Structures, and Framing Processes—Toward a Synthetic, Comparative Perspective on Social Movements." In *Comparative Perspectives on Social Movements Opportunities, Mobilizing Structures, and Framing*, eds. D. McAdam, J. D. McCarthy, and M. N. Zald, 1–20. Cambridge, UK: Cambridge University Press.

McCann, Michael. 2006. "Law and Social Movements: Contemporary Perspectives." *Annual Review of Law and Social Science* 2: 17–38.

———. 2008. "Litigation and Legal Mobilization." In *The Oxford Handbook of Law and Politics*, eds. K. E. Whittington, R. D. Kelemen, and G. A. Caldeira, 522–40. New York: Oxford University Press.

McEvoy, Kieran. 2008. "Letting Go of Legalism: Developing a 'Thicker' Version of Transitional Justice." In *Transitional Justice from Below: Grassroots Activism and the Struggle for Change*, eds. Kieran McEvoy and Lorna McGregor, 15–45. Oxford and Portland, Oregon: Hart Publishing.

McEvoy, Kieran, and Lorna McGregor. 2008. "Transitional Justice from Below: An Agenda for Research, Policy and Praxis." In *Transitional Justice from Below: Grassroots Activism and the Struggle for Change*, eds. Kieran McEvoy and Lorna McGregor, 1–13. Oxford and Portland, Oregon: Hart Publishing.

Ministério Público Federal. 2013. *Crimes da Ditadura: Relatório Preliminar de Atos de Persecução Penal desenvolvidos pelo MPF acerca de graves violações de direitos humanos cometidas por agentes do Estado durante a ditadura.* Brasília: Procuradoria Geral da República.

Ministério Público Federal. Câmara de Coordenação e Revisão, 2. 2014. *Grupo de Trabalho Justiça de Transição: Atividades de Persecução Penal Desenvolvidas pelo Ministério Público Federal: 2011–2013.* Brasília: Ministério Público Federal.

Moraes, Mário Sérgio de. 2006. *O Caso da Ditadura: Caso Herzog.* São Paulo: Barcarolla.

Olsen, Tricia D., Leigh A. Payne, and Andrew G. Reiter. 2010. *Transitional Justice in Balance: Comparing Processes, Weighing Efficacy.* Washington DC: United States Institute for Peace.

Payne, Leigh A., Paulo Abrão, and Marcelo Torelly, eds. 2011. *A Anistia na Era da Responsabilidade: O Brasil em Perspectiva Internacional e Comparada.* Brasília: Ministério da Justiça, Comissão de Anistia; Oxford: Oxford University, Latin American Centre.

Reátegui, Felix, ed. 2011. *Transitional Justice Handbook for Latin America.* Brasília: Brazilian Amnesty Commission, Ministry of Justice and International; New York: Center for Transitional Justice.

Roht-Ariaza, Naomi, and Javier Mariezcurrena, eds. 2006. *Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice.* Cambridge: Cambridge University Press.

Santos, Boaventura de Sousa. 2005. "Beyond Neoliberal Governance: The World Social Forum as Subaltern Cosmopolitan Politics and Legality". In *Law and Globalization from Below: Towards a Cosmopolitan Legality*, eds. Boaventura de Sousa Santos and Cesar A. Rodriguez-Garavito, 29–63. Cambridge, UK: Cambridge University Press.

———. 2014. "A Critique of Lazy Reason: Against the Waste of Experience and Toward the Sociology of Absences and the Sociology of Emergences." In *Epistemologies of the South: Justice Against Epistemicide*, 164–87. Boulder and London: Paradigm Publishers.

Santos, Boaventura de Sousa, and César A. Rodríguez-Garavito. 2005. "Law, Politics, and the Subaltern in Counter-Hegemonic Globalization." In *Law and Globalization from Below: Towards a Cosmopolitan Legality*, eds. Boaventura de Sousa Santos and César A. Rodríguez-Garavito, 1–26. Cambridge, UK: Cambridge University Press.

Santos, Boaventura de Sousa, and Flávia Carlet. 2010. "Movement of Landless Rural Workers in Brazil and Their Struggles for Access to Law and Justice." In Marginalized Communities and Access to Justice, eds. Yash Ghai and Jill Cottrell, 60–82. Abingdon: Routledge.

Santos, Boaventura de Sousa, Paulo Abrão, Cecília MacDowell Santos, and Marcelo Torelly, eds. 2010. *Repressão e Memória Política no Contexto Ibero-Brasileiro: Estudos sobre*

Brasil, Guatemala, Moçambique, Peru e Portugal. Brasília: Ministry of Justice, Amnesty Commission; Coimbra: Center for Social Justice, University of Coimbra.

Santos, Cecília MacDowell. 2007. "Transnational Legal Activism and the State: Reflections on Cases Against Brazil in the Inter-American Commission on Human Rights." *Sur-International Journal on Human Rights* 4 (7): 29–59.

———. 2009. "A Justiça ao Serviço da Memória: Mobilização Jurídica Transnacional, Direitos Humanos e Memória da Ditadura." In *Desarquivando a Ditadura: Memória e Justiça no Brasil*, vol. II, eds. Cecília MacDowell Santos, Edson Teles, and Janaína de Almeida Teles, 472–95. São Paulo: Hucitec Press.

———. 2010. "Memória na Justiça: A Mobilização dos Direitos Humanos e a Construção da Memória da Ditadura no Brasil." *Revista Crítica de Ciências Sociais* 88: 127–54.

Schneider, Nina. 2011. "Impunity in Post-Authoritarian Brazil: The Supreme Court's Recent Verdict on the Amnesty Law." *European Review of Latin American and Caribbean Studies* 90: 39–54.

Sikkink, Kathryn. 2012. *The Justice Cascade: How Human Rights Prosecutions Are Changing World Politics*. New York: W.W. Norton and Company.

Soares, Inês V. Prado, and Renan H. Quinalha. 2013. "Os Escrachos e a Luta por Verdade e Justiça: O Que Esperar em 2013?" *Correio da Cidadania* (January 3, 2013). Available at: http://www.correiocidadania.com.br/index.php?option=com_contentandview=articleandid=7968:dicionario030113andcatid=19:dicionario-da-cidadaniaandItemid=56 (Accessed January 6, 2014).

Teitel, Ruti. 2003. "Transitional Justice Genealogy." *Harvard Human Rights Journal* 16: 69–94.

Teles, Janaína de Almeida, ed. 2001. *Mortos e Desaparecidos Políticos: Reparação ou Impunidade?* São Paulo, Humanitas/FFLCH/USP. [2nd ed.].

———. 2005. "Os Herdeiros da Memória: A Luta dos Familiares de Mortos e Desaparecidos Políticos por "Verdade e Justiça" no Brasil." Master Thesis, University of São Paulo.

———. 2010. "Os Familiares de Mortos e Desaparecidos Políticos e a Luta por "Verdade e Justiça" no Brasil." In *O Que Resta da Ditadura: A Exceção Brasileira*, edited by Edson Teles and Vladimir Safatle, 253–98. São Paulo: Boitempo.

Vanhala, Lisa. 2012. "Legal Opportunity Structures and the Paradox of Legal Mobilization by the Environmental Movement in the UK." *Law and Society Review* 46 (3): 523–56.