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Accountability for Volkswagen's Role in the Brazilian Dictatorship

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More than three decades after the end of the Brazilian dictatorship (1964-1985), the country is still trying to understand this period of its history. Since 2011, when President Dilma Rousseff created the National Truth Commission (CNV), Brazil has been engaged in intense discussion about state-sponsored crimes that were pardoned in 1979 by an Amnesty Law implemented before the military ceded power to civilian hands.

The Brazilian military and the Supreme Court currently argue that the dictatorship's human rights violations were addressed with the 1979 law, and that the law is consistent with the 1988 post-dictatorship Constitution. The Amnesty Law exempts crimes committed by both the repressive military apparatus and armed opposition groups. Despite the attempt to institutionally impose a pact of reconciliation via impunity for both sides, hundreds of victims and their relatives continue to struggle for recognition for the crimes committed during this period. Many still do not know what happened to those forcibly disappeared between 1964 and 1985.

From 1994 to 2014, Brazil elected three presidents who confronted the dictatorship. Intellectual Fernando Henrique Cardoso (1995-2002) was exiled in Chile owing to his political opposition to the dictatorship. Labour union leader Luiz Inácio Lula da Silva (2003-10) was imprisoned for his challenges to the dictatorship. Economist and former guerrilla fighter Dilma Rousseff (2011-16) was detained and tortured by the regime. However, the rise to power of these political actors did not translate into a rupture with the state's policy on the dictatorship's crimes. They made no ground-breaking efforts

to hold criminals accountable. Former military captain Jair Bolsonaro (2019-) won the 2018 presidential elections; in his previous role as a long-time congressman, he frequently praised the military regime. ‘The dictatorship’s mistake was to torture and not kill more’, he said in 2016 (Phillips 2019). One of Bolsonaro’s most infamous acts in Congress was when he dedicated his vote to impeach President Rousseff in honour of former army colonel Carlos Alberto Brilhante Ustra, one of Brazil’s most notorious torturers.

In this general context, the issue of addressing economic actors’ complicity in the dictatorship emerges. The Volkswagen case is the first instance of such an effort. The company allegedly engaged in ‘direct complicity in criminal violence’ (e.g., collaboration with the police in monitoring workers’ activities), and other ‘gross human rights violations with regard to labour’ (e.g., attempts to suppress workers’ rights to unionise and to strike), according to the definition in Payne *et al.* (2020: 4). In 2015, former Brazilian workers mobilised to denounce crimes they connected to the German-owned company. Internationally, the Inter-American Court on Human Rights 2010 sentence, which ruled that Brazil had the obligation to investigate and punish the dictatorship’s grave human rights violations, empowered domestic actors to conduct the inquiry into the company’s alleged abuses.

According to stakeholders involved in the process, Volkswagen became the pioneering case for Brazil’s efforts at accountability for corporate complicity due to the large amount of existing evidence, including victims’ testimonies — gathered by the public hearings of the truth commissions — and official archives of the São Paulo political police (DOPS). These sources suggested that Volkswagen cooperated with the repressive apparatus of the Brazilian military dictatorship, at least from 1969 to 1979, in the following ways: providing police officers with access to their plants and factories

in order to facilitate the imprisonment and torture of workers; the sharing of workers' personal information; the donation of vehicles and money to sustain a semi-clandestine, anti-subversive organisation, *Operação Bandeirante* (OBAN); and coordinating a group of São Paulo-based private corporations that maintained a close dialogue with the repressive apparatus in the early 1980s. There were two phases of this cooperation. In the first, Volkswagen watched and tracked left-wing employees, representing the ideological control that the Brazilian regime justified as part of Cold War vigilance. In the second phase, from 1979 to 1981, the company was more concerned with workers' unions and potential disruptive strikes (Mingardi 2017: 23). Two other allegations against Volkswagen were investigated: its participation in the movement that ousted President João Goulart in 1964 and its hiring of Nazis who had fled Europe after World War II.

Given the fact that the Supreme Court ruled in 2010 that the Amnesty Law was constitutional, the only way to compensate victims of these actions involved a truth trial, an innovative legal tool used when the prosecutors do not have the power to charge or convict perpetrators. Although the final agreement reached between the prosecutors and Volkswagen in September 2020 (further detailed in the 'Final remarks' section) did include R\$ 36.3 million (€5.5 million, \$6.4 million) in reparations — or, more precisely, 'donations' — to the victims and their families, it did not force the company to fully come to terms with its past complicity with human rights violations. The agreement formally exempts Volkswagen do Brasil and its former executives of all responsibilities for corporate complicity with the dictatorship.

In this chapter, we present how the allegations against Volkswagen evolved as a case of corporate accountability from below. Each of this chapter's sections will explore one of the elements of the 'multidimensional approach' enabled by the Archimedes'

Lever analogy for corporate accountability from below (Payne *et al.* 2020: Chapter 1). In the first section, we present the evolution of the accountability process, highlighting the importance of mobilised civil society groups' push for accountability through truth commissions and workers' groups. Secondly, we detail the institutional innovators' tools and prosecutorial strategy to implement transitional justice despite the difficulties imposed by the 1979 Amnesty Law. Thirdly, we address the force applied by international pressure towards accountability in the Volkswagen case, given the results of the 2010 decision of the Inter-American System and the efforts of a group of German shareholders. In the fourth section, we assess the company's attempt to act as a veto player aiming, on the one hand, to improve its public image, and, on the other hand, to adopt an uncooperative, divisive posture in the litigation process. We conclude with insights into what the Volkswagen case has to offer in terms of understanding corporate accountability and transitional justice, and the enormous hurdles it faces in achieving those goals.

Truth Trials and Mobilised Civil Society: Building the Volkswagen Case

The September 2020 agreement in the Volkswagen case was the result of a long and gradual path to deploy transitional justice mechanisms to address past atrocities in Brazil. The political decision to establish the CNV in 2011 created a cascading effect that was critical in the quest for accountability for economic actors' human rights violations. Despite not holding legal authority to investigate and prosecute, the CNV (and several other local truth commissions across the country) functioned as a truth trial, in which the commission had the power to subpoena suspected individuals to testify (Payne *et al.* 2020: 248-50). The testimonies to the CNV and other evidence it gathered were published in the CNV's 2014 final report. In the state of São Paulo, the local truth

commission convened a special session to address corporate complicity. Volkswagen's former employees were among the victims summoned to narrate their past experiences in the car assembly plant during the dictatorship.

The following subsection contains a summary of the allegations of corporate complicity against Volkswagen. We then analyse the critical role that the innovative truth trial mechanism and the CNV's cascading effect played in presenting evidence of Volkswagen's alleged human rights violations.

A Summary of Allegations of Corporate Complicity

There are six reports in total that describe and detail the allegations of human rights violations against Volkswagen do Brasil. The CNV and the Rubens Paiva Truth Commission published the first two reports in December 2014 and March 2015, respectively. These two studies generated a new collective solidarity among the workers. In an unprecedented joint legal enterprise, Brazil's ten workers confederations and three large workers unions delivered a petition to the Public Prosecutor's Office (MPF) in September 2015 demanding that the case be investigated in the civil sphere. Their petition summarised the CNV's and the Rubens Paiva Commission's allegations against Volkswagen but also included new findings and documents. This constituted the third report. The fourth report was the initial investigation behind the Volkswagen legal action. The MPF hired Guaracy Mingardi, a researcher with expertise in political science and security issues, to ensure the validity of the documents collected in the previous investigations. This fourth report further legitimated the MPF's findings. Mingardi's report was followed by Kopper's publication, commissioned by the company. This was the fifth report that addressed the issue of Volkswagen's complicity in the dictatorship. The last, or sixth, report was disclosed in September 2020: the 10-

page agreement ('*Termo de Ajustamento de Conduta* ') between the prosecutors and the company, which put an end to the five-year negotiation between Volkswagen and the workers, mediated by the prosecutors.

These reports have a few key differences. Kopper's study is the most conservative, limiting Volkswagen's cooperation to the military regime from 1969 to 1979. Kopper's conclusions about this period were corroborated by Mingardi. Both reports agree that there was a shift in Volkswagen's behaviour towards workers and the Brazilian military regime in 1968-1969. However, they point to different reasons for this change. According to Kopper, the presidential succession in Volkswagen's headquarters in Germany in 1968 produced a closer relationship with the Brazilian regime. The new president, Kurt Lotz, used to hold personal meetings with prominent leaders of the Brazilian dictatorship, such as presidents Emilio Garrastazu Médici (1969-74) and Ernesto Geisel (1974-79). In contrast, his predecessor, Heinrich Nordhoff, gave instructions to his representatives in Brazil to avoid political ties with the military regime (Kopper 2017: 20).

There is debate over the validity of this argument. Other investigations place Volkswagen among the list of companies that made donations in support of the 1964 coup (Silberfeld 1984: annex 14; CNV 2014, v.2: 321). Despite Nordhoff's instructions, Volkswagen's president in Brazil, Friedrich Schultz-Wenk, seemed to welcome not only the regime's economic policies — for example, when President Humberto de Alencar Castello Branco (1964-67) reduced tariffs for the automotive sector — but also its labour policies, characterised by control over unions, the detention of independent union leaders, and establishing wage compression through the regulation of the national minimum wage (Kopper 2017: 20).

The Kopper and Mingardi reports highlight that the arrival of a new chief in Volkswagen's security office in 1969 was crucial to the company's complicity with the dictatorship. Colonel Adhemar Rudge assumed the position of chief of Volkswagen's Industrial Security Department (Departamento de Segurança Industrial) after an extensive career in the Brazilian Armed Forces. He worked in the Federal Police and as an advisor for at least five Justice ministers. When Rudge started at Volkswagen, he began hiring many people who had previously worked with him in the military (Mingardi 2017: 22). Rudge also managed to develop a close relationship with the repressive apparatus that included sharing workers' personal information with the regime's political police.

The main case detailed by Kopper and Mingardi was the imprisonment of six Volkswagen employees in 1972, all of whom were members of the Communist Party. Amauri Danhone, Lúcio Bellentani, Antonio Torini, Geraldo Castro del Pozzo, Heinrich Plagge, and Annemarie Buschel were all arrested and interrogated for seven weeks by the DOPS political police. They were all found innocent by a military court but, on appeal, were condemned and received a two-year sentence in 1974. According to Bellentani, he was detained while he was at work, inside Volkswagen's factory in São Bernardo do Campo, near São Paulo. 'The torture started as soon as I entered Volkswagen's security office: I was beaten straight away; slapped and punched with fists', (Comissão Municipal da Verdade 'Vladimir Herzog' 2013: 48-51). Later that day, he was transferred to DOPS political police, where torture escalated for 47 days. Sessions included the use of *pau-de-arara*, or 'parrot's perch' (torture used on a victim bound to a pole suspended in the air) and cross-examinations with other workers, pressuring them to denounce each other. Bellentani also asserted that Rudge witnessed

his imprisonment. Rudge, however, denied this accusation during his testimony before the Rubens Paiva Truth Commission in 2015.

During the same late 1960s and 1970s period, Volkswagen was also associated with the creation of OBAN (1969), a special unit designed to eliminate left-wing opposition in São Paulo. One of the most well-known studies about the Brazilian military regime argues that public authorities requested financial help from wealthy companies to create OBAN and that Volkswagen contributed vehicles to that effort (Gaspari 2002: 62). Most of these companies, like Volkswagen, were part of São Paulo's Federation of Industries (FIESP). According to Kopper's report (2017: 54), 'it seems likely that VW do Brasil did provide material assistance to the OBAN either directly (through the supply of vehicles) or indirectly (through its FIESP membership fees).'

The imprisonment of workers supposedly connected to communism and the donations to OBAN were two notorious issues linked to Volkswagen in academic scholarship (Dreifuss 1981; Gaspari 2002: 62; Silberfeld 1984: annex 14). However, the inclusion of primary sources in CNV's report supporting corporate complicity strengthened victim's demands. Civil society debate on the topic occurred within groups such as the Workers' Forum for Remembrance, Truth, Justice, and Reparation, comprised of Brazil's ten workers' confederations, three large workers' unions, and human rights groups. Media coverage also followed these debates, especially alternative, small-scale news outlets (Nuzzi 2016; Amorim *et al.* 2016: 197-205; IIEP 2016).

Another relevant aspect of Volkswagen's relationship to the Brazilian dictatorship that was identified by all investigative reports is its actions during strikes. The most infamous case happened in São Bernardo do Campo and involved the union's leader, Luiz Inácio Lula da Silva. Led by the man who would become Brazil's president (2003-

10), the workers began a campaign for higher wages. During a strike initiated in May 1978, Volkswagen implemented drastic measures. The company's security personnel positioned themselves behind workers to prevent them from talking to each other. Also, the telephone system in the plant was disabled to limit communication. The strikes succeeded nonetheless, and the auto industry employers' association was compelled to increase workers' wages by 11 per cent. This agreement, however, did not prevent the company from allegedly engaging in repression by detaining employees (Kopper 2017: 77-8).

In March 1979, during another strike, Volkswagen requested the presence of the police inside its plant. To thwart repression, Volkswagen workers protested at other companies' plants, and the employees from those plants protested at Volkswagen. During this period, Volkswagen's Industrial Security department produced daily reports for the Brazilian political police (Kopper 2017: 81). The second strike was different from the first because of its occurrence at the beginning of the political opening, or *abertura*. By 1979, reduced press censorship increased exposure to the strikes. Legislation regarding workers' rights also resulted in greater tolerance towards protests. Political shifts and greater visibility of labour struggles did not produce easier negotiations. Indeed, in 1980, many union leaders – including Lula – faced arrest.

Volkswagen also coordinated private-sector efforts to collaborate with the military's repressive apparatus. Rudge was identified as the key person coordinating the dialogue among the companies in preparing reports on workers for the political police. One example of this kind of initiative was CECOSE, a group located in Vale do Paraíba, São Paulo, and composed of 25 companies that shared workers' personal information with the dictatorship in the early 1980s.

Lastly, Volkswagen faced accusations of hiring Nazis who had fled Europe after World War II. This accusation emerged when Franz Paul Stangl was arrested in 1967 in São Paulo. Stangl, a former commandant of the Nazi death camp at Treblinka responsible for the deaths of more than 700,000 Jews, arrived in Brazil in 1951 using his true name. He was employed by Volkswagen as a mechanic in October 1959 and worked in the company until his arrest. Kopper's report (2017: 122) argues that Volkswagen favoured employment of German-speaking immigrants and that Stangl's hiring was part of this routine practice. Volkswagen's past relationship with the Nazi government in Germany raised suspicions about Stangl. The CNV and several news outlets repeated an unconfirmed rumour that Stangl worked in the company's Industrial Security department. This does not appear to be the case (Kopper 2017: 118; Mingardi 2017: 17).¹

Truth Trials and their Cascading Effect

In Brazil, where advances in transitional justice were timid, compiling and presenting a detailed list of allegations of corporate complicity is a significant achievement. Given the country's impunity record regarding accountability for violations committed during the dictatorship, the Volkswagen case was only made possible through a truth trial mechanism, similar to the one used in Argentina during the 1990s, when amnesty laws blocked trials of human rights perpetrators (Payne *et al.* 2020: 248-50). In truth trials,

¹ A news article written by José Casado (2005) originally linked Stangl to Volkswagen's repressive apparatus. The accuracy of the claim still lacks confirmation. The CNV's final report (2014 vol.II: 67) and media news outlets have repeated it, citing Casado, but reports by Mingardi (2017: 17) and Kopper (2017: 118) deny it. When the CNV report was released in 2014, Volkswagen emphatically rejected this accusation while seemingly accepting the other claims in the report.

both victims and suspected human rights violators received subpoenas to testify before a committee, but they could not be criminally charged or convicted. According to Payne et al. (2020: 249), the principle behind truth trials highlights that the victims and relatives' 'right to truth requires courts to investigate the circumstances and hold accountable those responsible for human rights violations even though there is no possibility of punishment'.

In the years immediately following the end of the Brazilian dictatorship, the victims of torture in Brazil lacked recognition and strength to mobilise civil society sectors behind a demand for accountability. From 1985, the symbolic year that put an end to the military regime, to 2011, when the CNV was created, Brazil made no advances in pursuing truth or justice by means of investigating the dictatorship's crimes. However, the Federal Government established a policy of reparations for the victims in 1994. Although a few of Volkswagen's former employees individually petitioned the Commission, collective demands occurred only after the CNV issued its report in 2014. This collective action resulted from a new interpretation of the violations based on the CNV report. Specifically, the violations were not individual or isolated events, but part of an orchestrated policy.

The CNV thus not only initiated the first official investigations into past authoritarian state crimes, but also produced a cascading effect in local communities throughout the country. Universities, NGOs, and regional legislative powers implemented more than 100 subnational commissions. Some of them, such as the Rubens Paiva Truth Commission, sponsored by the São Paulo state legislature, went the farthest in terms of exposing corporate complicity. The Rubens Paiva Truth Commission held a public hearing on abuses committed by the business community in collaboration with the military apparatus. In the case of Volkswagen, a company lawyer

and former employees gave testimonies about the period. In effect, these public hearings operated as truth trials, an unprecedented attempt to address corporate accountability for human rights violations. This innovation was fundamental to attracting public attention and media coverage, and to mobilise civil society groups that would subsequently gather the evidence against Volkswagen and trigger civil action in the Public Prosecutor's Office.

Institutional Innovators: The Prosecutors' Corporate Accountability Strategy

Pursuing justice and truth in a country where the legal system's record of handling the authoritarian past is marked by impunity poses a particular set of challenges. In this section, we focus on the long and tortuous path that Brazilian prosecutors followed to eventually reach a pioneering corporate accountability role. They developed innovative tools and strategies to surpass inactivity in the Brazilian Judiciary, avoid internal resistance among prosecutors, and build consensus towards transitional justice and its duty to investigate charges against Volkswagen.

Post-authoritarian Brazil never abandoned the impunity legacy of the country's transition. That 'slow, gradual, and secure' *abertura* (opening) involved a pact of reconciliation in which amnesty was exchanged for the end of military rule. No clear or complete break with authoritarian rule occurred. There was neither rupture nor collapse (Codato 2006: 99; Chaves & Cattai 2019: 208-9), but rather decompression (Huntington 1968; Cancelli 2018: 123; Cattai n.d.), in which the military's top leaders retained control over, and dictated the pace of, the process. The transition had deep authoritarian roots marked by a continuity with the past, producing a highly constrained democracy. The motto from the period — 'to turn the page' — encapsulates the pact and its stamp of impunity.

A defining characteristic of Brazil's transition is its enduring 1979 Amnesty Law. At the time, the opposition perceived the law as a political victory because it allowed the right of return from forced exile, the release of political prisoners, and a civilian government. This 'law of oblivion' pardoned politically-motivated crimes, exempting both sides — members of the opposition's armed struggle and authoritarian state actors — from prosecution for crimes associated with the political past.

During the 1990s, successive democratic governments took timid steps towards transitional justice, without challenging the Amnesty Law. In 1995, the Ministry of Justice of the Fernando Henrique Cardoso administration established the Special Commission on Political Deaths and Disappearances (CEMDP), representing the first time that the Brazilian State officially recognised the crimes committed by the authoritarian regime. The CEMDP was tasked with recognising the identity and locating the bodies of the dictatorship's victims. Nevertheless, the text of the 1995 bill (Federal Law 9140) also very clearly distanced itself from any rupture with the transitional pact by stating that it was 'guided by the principles of reconciliation and national appeasement expressed in the Amnesty Law of 1979.' To further institutionalise victims' rights, the Cardoso administration created the Amnesty Commission in 2002. The Commission approved requests for financial reparations to the directly affected and the families of the deceased, including former Volkswagen employees. Parallel to this timeline of federal government's policies, the MPF developed a trajectory of its own in addressing transitional justice through legal means.

Overcoming Internal Resistance

The Public Prosecutor's Office (MPF) began its path to transitional justice in 1999, when it received the first civil complaint of torture during the dictatorship. The

humanitarian organisation Torture Never Again (*Grupo Tortura Nunca Mais*) questioned the nine-year delay in identifying the remains of a mass, clandestine grave in Perus, west of the city of São Paulo, where the military had buried the bodies of its political opponents. In the same year, a similar request was filed by the families of the Araguaia guerrilla fighters.

The MPF was legally bound to respond to these civil inquiries. However, it faced internal institutional resistance. The consensus at the time in most of the branches of the Brazilian legal system was that the Amnesty Law acquitted all actors involved in perpetrating political crimes of all responsibilities, even civil action. Although the MPF, as a whole, shared this view, a few prosecutors working on transitional justice disagreed. They faced internal pressure against, and deep suspicion of, their approach. These transitional justice prosecutors encountered sharp criticism from their colleagues, including disciplinary action.²

An illustration of this tension is the Supreme Court's 2010 examination of the constitutionality of the Amnesty Law. The Brazilian Bar Association (OAB), an organisation at the forefront of opposition to the military regime during the 1970s and 1980s, brought a legal challenge to the constitutionality of the Amnesty Law. By a vote of seven against two, the Supreme Court rejected the challenge and the law's legal status. This judicial decision by the highest court in the country is thus perceived as a major hindrance to transitional justice in Brazil (Weichert 2011). In addition, the Attorney General and chief of MPF at the time, Roberto Gurgel (2009-13), argued in court that the Amnesty Law should not be overruled (Weichert 2011). The top-ranking official of the MPF thus sent strong and clear signals opposing the transitional justice

² Interview with Marlon Weichert, São Paulo, 11 July 2019.

work of MPF prosecutors. Those prosecutors, however, remained in their positions owing to the autonomy and job security afforded by their posts.

Indeed, these MPF prosecutors used their autonomy and job security to file a controversial civil lawsuit against two notorious dictatorship era high-profile military commanders for illegal arrests, torture, assassination, and forced disappearance. They thus challenged the government to intervene on behalf of victims of the dictatorship. President Luiz Inácio Lula da Silva responded to the challenge by supporting the Defence and the Federal Advocacy (AGU) ministers, who sided with the Amnesty Law and impunity for the accused. He thus undermined the efforts by the Justice and Human Rights ministries and the transitional justice prosecutors to address victims' rights.³

Civil demands for truth and justice grew nonetheless in the first decade of the 2000s. The MPF advanced accountability for these cases to a certain extent. The demands forced the federal government to provide information to victims' families, particularly with regard to the identity of human remains and the correct cause of death. In 2010, an MPF working group (the Working Group on the Right to Memory and Truth) was created exclusively to deal with accountability for crimes committed by the military regime and to coordinate prosecutors' efforts on behalf of victims of state crimes. The working group eventually proved to be an important avenue for legal action, providing cohesion, information, and the intellectual and legal foundations for prosecutors throughout the country. The MPF office formed two other thematic working groups: the Working Group on Transitional Justice (2012), in response to the decision by the Inter-

³ Interview with Marlon Weichert, São Paulo, 11 July 2019.

American Court on Human Rights against the Brazilian state (see the section on the Court); and the Working Group on Indigenous People and Military Dictatorship (2013).

The working groups are important mechanisms to build and spread consensus in the MPF. Although they are not operational, in the sense that working groups cannot participate in court procedures, they function as internal channels of discussion by providing support to first-time prosecutors assigned to dictatorship cases in different regions of the country. The MPF's more experienced staff, the ones with a longer record and familiarity with transitional justice cases, assist their colleagues by discussing cases and studying documents. The working groups are a propitious forum of reflection and decision-making in the MPF. Their aim is to establish a coherent institutional perspective on broad, complex subjects, such as transitional justice, and therefore they avoid isolated positions that could undermine the judicial strategy.

Achieving Corporate Accountability

Despite the unfavourable political context for advancing transitional justice in the 1990s and 2000s, the MPF developed expertise in finding innovative pathways for seemingly legal dead-ends.⁴ They became what Payne *et al.* (2020: 45-9) refer to as 'institutional

⁴ In 2010 the Brazilian Supreme Court maintained the status quo of the Amnesty Law and the Inter-American Court on Human Rights condemned the Brazilian state to investigate the dictatorship's crimes. The MPF chose to come forward with pressing criminal charges against repression agents, but decided that priority would be given to the cases of forced disappearances. Since there is no corpse, the prosecutors argued that it is a permanent crime of kidnapping and, therefore, it could not be under the effect of the Amnesty Law of 1979. The plan outlined by the MPF in its working groups was to file as many lawsuits as possible, presenting legal actions in different regions of the country. In doing so, the MPF increased the chances of success and hoped to change jurisprudence from the lower courts, from the bottom up. The results did not achieve that outcome. While the MPF obtained a few victories in lower courts, they were overruled in higher courts, after some members of the Supreme Court adopted legal terminology referring to the disappeared as 'presumed dead', thereby removing the possibility of advancing the case as an ongoing

innovators’, finding creative legal manoeuvres around significant hurdles. The investigation into corporate complicity was part of this process. The MPF responded to the September 2015 civil petition against Volkswagen from the workers’ collective with a preliminary civil action investigation. It was not a formal lawsuit or presented before a judge to request a formal trial. If the MPF had done so, the Amnesty Law would have blocked the investigation. Investigation, however, is not prohibited. Indeed, the prosecutors are bound by law to investigate the case and ‘produce evidence demonstrating the involvement of the company in human rights violations’ (Payne *et al.* 2020: 248). Knowing that the civil action could not move to trial because of the Amnesty Law, the investigation formed the basis of a truth trial.

As a preliminary judicial investigation to collect evidence, the prosecutors could avoid violating the Amnesty Law and still submit formal requests for documents to institutions, such as the Brazilian National Archive, the São Paulo State Archive, the Ministry of Justice, and Volkswagen itself. They could also subpoena and take testimonies from victims, witnesses, and former Volkswagen employees. When the MPF completed its inquiry, prepared its dossier on Volkswagen’s wrongdoing, and released it to the public in 2020, a kind of non-judicial accountability and truth-telling function for corporate complicity in past violations was achieved. In the context of highly constrained transitional justice, this was a unique outcome.

Another unique aspect of the Volkswagen inquiry is that three different branches within the MPF investigated the company. This highly unusual process demonstrates cohesion among a small group of prosecutors. Each branch represents separate institutions and professional expertise. The prosecutors involved belong to different

crime (Freitas 2017: 125). Interview with Marlon Weichert, São Paulo, 11 July 2019.

professional associations and respond to different hierarchical managers. While collaboration between federal prosecutors (MPF) and São Paulo's state prosecutors (MPSP) in human rights matters is not uncommon, the unusual participation of the labour branch of the prosecution (MPT) reflects an added dimension of innovative strategies to negotiate financial reparations to workers that posed challenges to Volkswagen's lawyers.

International Pressure since the 2010 Inter-American Court Sentence

When adequately handled, international forces may be a potent tool to empower local actors in their pursuit of corporate accountability. In this section, we examine the impact of the Inter-American Court decisions on Brazilian judicial actors. We further explore how certain actions taken by German civil society organisations, and covered in the local media, increased pressure within the Volkswagen's headquarters to take a stance on the company's past collaboration with the Brazilian dictatorship. Forces seeking truth and justice for Volkswagen's former workers used both of these international actions to pressure the company and tarnish its public image, already damaged by a global environmental scandal.

High Hopes for Accountability

In November 2010, the Inter-American Court of Human Rights declared the Brazilian state responsible for failing to investigate and prosecute violations committed during the 1970s. In the 'Gomes Lund and others vs. Brazil' case the Court called on the Brazilian government to comply with its duty to investigate the role of the dictatorship's security forces in the illegal detention, torture, and forced disappearance of 70 people

between 1972 and 1975. Those tortured and disappeared were local peasants and members of an armed branch of the Communist Party (PC do B) preparing to launch a guerrilla movement in Araguaia in the north of Brazil. The Court ruled that Brazil had not properly conducted an investigation, pursued criminal prosecution, or applied penal sanctions for civil and military agents responsible for the acts. Contrary to the Brazilian Supreme Court's decision on the case just a few months earlier, the Inter-American Court declared that the 1979 Amnesty Law could not be applied to the case. Doing so violated Brazil's duties to investigate, prosecute, and remedy crimes against humanity.

The Court's judgment spurred a response within the MPF. Empowered by the Court's ruling, the group of prosecutors working on dictatorship crimes used the ruling to motivate widespread discussion and awareness within the institution, including high ranking officials. A shift away from the previous position that violations during the dictatorship were isolated acts shielded from prosecution by the Amnesty Law. The MPF developed an official policy and a corresponding set of powerful legal tools to respond to its legal duty to criminally investigate and prosecute the perpetrators (Freitas 2017: 115). The consensus reached within the MPF proved crucial to generating the political and legal capital within the institution to overcome the barrier to corporate accountability.

In its 2010 ruling, the Inter-American Court also listed several reparation measures directed at the Brazilian state. One of them was to establish a truth commission, which the ruling characterised as 'an important mechanism, among others that already exist, to comply with the obligation of the State to guarantee the right to the truth of what occurred' (Inter-American Court of Human Rights 2010: 106). The creation of the CNV

in 2011 is seen by some as a direct response to the Court's orders.⁵ The CNV was an important channel through which investigations on corporate complicity could be deepened. The Commission's final report gathered particularly solid information on the collusion between Volkswagen and the political repression apparatus. Such evidence later led to the civil investigation by the MPF.

Shareholder Action, 'Dieselgate', and Volkswagen's Public Image

A key initiative related to the international pressure on Volkswagen's Brazilian case is linked to the work of the Association of Critical Shareholders⁶, a non-profit group that holds shares in about 25 large-scale German companies. In accordance with German corporate regulations, all shareholders are entitled to speak in annual meetings and the company is obliged to provide answers. At a Volkswagen's annual shareholders' meeting in Germany in May 2014, the group raised the issue of the company's role in human rights violations during the Brazilian dictatorship. Timed with the 50th anniversary of the 1964 coup d'état, the shareholders demanded that Volkswagen investigate its role in the Brazilian dictatorship.⁷

⁵ Interview with Marlon Weichert, São Paulo, 11 July 2019.

⁶ See <https://www.kritischeaktionaeere.de/>

⁷ According to Christian Russau, a Portuguese-speaking member of the Association of Critical Shareholders, and one of the leading German activists pressuring behind the Volkswagen in Brazil case, the project was initiated in July 2013. They carried out research in their own archives that revealed international solidarity networks between Brazilian and German union workers in the 1970s. They planned to use the information from this network to raise the issue of Volkswagen's complicity in the annual shareholders' meeting in May 2014. As a journalist, Russau began to publish articles in the German press in February and March 2014. The group subsequently prepared the public motion to question Volkswagen at the May 2014 shareholders' meeting. The company answered the questions in July 2014. All of this took place before the publication of the CNV's final report in December 2014.

The automaker adopted a conservative posture at first. One of its directors argued that the subject of the Critical Shareholders' claims was outdated (Russau 2017: 113). The German company was unwilling to make strong commitments prior to having access to the content of the CNV's investigation. Volkswagen pointed out that if Brazil's CNV was able to prove that the company committed any human rights violations, then the company would have to address those allegations (Sion *et al.* 2016: 191). The final report of the CNV with such allegations was released to the general public later that year.

The Association of Critical Shareholders' demand had an impact in two ways. First, it was a form of civil mobilisation that compelled Volkswagen to take a position on its past actions in Brazil. Second, this type of meeting produced significant media coverage not only in Germany but also globally.⁸ One of the most powerful outcomes of this media attention was a documentary produced by German public broadcaster ARD called *Accomplices? VW and Brazil's Military Dictatorship*. The documentary was released in Germany in July 2017 with a Portuguese-subtitled version and presented interviews with Volkswagen former directors in Brazil from the 1960s to the 1980s, victims of human rights violations, and the company's current lawyers.

The effects of the Inter-American Court's ruling and the efforts of the Association of Critical Shareholders represent a distinct manifestation of international pressure for addressing corporate complicity. Payne *et al.* (2020: 27) note that the push for global accountability relies on 'key global agents with an effective set of tools', usually from traditional human rights agencies. Neither of them possessed clear mandates to get

⁸ Prior to petitioning the Volkswagen case in MPF, the workers' group passed the information to some left-leaning German news media. The story was picked up by nationwide-circulation German newspapers and increased the pressure against Volkswagen (Kopper 2019: 4037).

corporate accountability in the domestic arena — the ruling could not change the status of the Amnesty Law, and the shareholders could only count on the company's commitment to answer their demands for information. However, in both cases, international pressure did occur in a positive way. The Court's ruling empowered institutional innovators (CNV and MPF). On the other hand, the shareholders' actions raised public awareness both in Germany and in Brazil, and also pressured the company to produce a public response.

Also, in September 2015, a worldwide environmental scandal affected Volkswagen's public image. So-called 'Dieselgate' started when the U.S. Environmental Protection Agency (EPA) discovered that Volkswagen was cheating on emission tests. Vehicles sold in the US market contained a device designed specifically to deceive regulators in order to meet US standards. The German company later admitted to the fraud scheme that affected about 11 million cars across the globe and agreed to pay approximately \$30 billion in compensations to settle the case.

In the fall of 2015, Volkswagen was already dealing with a large-scale image management crisis. Almost simultaneously, in September 2015, the joint endeavour of Brazil's workers confederations, workers unions, and human rights groups delivered the civil petition to the MPF. The company might have felt the need to cooperate in order to avoid further damaging public relations. Volkswagen hired an independent historian, organised a public ceremony in the car assembly plant to hand the report to the workers, and sold the story to an important São Paulo-based newspaper for its Sunday front page. As we will see in the subsequent section, Volkswagen dealt with its accusations by adopting different strategies towards the public and behind closed doors with the prosecutorial team.

Volkswagen's Efforts as a Veto Player

Volkswagen's behaviour was not uniform throughout the whole process detailed in this chapter. In public, the company stressed its commitment to coming to terms with its past by commissioning an independent historian to investigate its ties to the Brazilian dictatorship. In the sphere of the civil lawsuit, however, cooperation with prosecutors proved limited. In parallel, by delaying the process and offering individual reparations, the carmaker attempted to divide and undermine solidarity within the workers' movement.

Volkswagen's Corporate History Department played a pioneering role back in the 1990s after becoming one of the first German companies to hire independent researchers to investigate accusations of corporate complicity during the Nazi period. In 1996, Manfred Grieger and Hans Mommsen published a 900-page report that received positive attention in the local media.

In 2014, even before the CNV's final report, Volkswagen seemed to replicate the same approach. 'In regard to their historical communications strategy, Volkswagen acted in defence of its positive reputation as an open communicator of its dark spots in the past' (Kopper 2019: ebook position 4050). Volkswagen's headquarters was already under pressure by the Association of Critical Shareholders over the company's collaboration with the Brazilian dictatorship. Soon after, the carmaker appointed Grieger to produce a report on the subject and sent him to Brazil. However, Volkswagen changed course midway and Grieger did not finish the job. In November 2016, the company hired Christopher Kopper to investigate Volkswagen do Brasil, the official Portuguese name of the automaker's Brazilian branch. Kopper is an experienced scholar in business history who has written books on the banking system in Nazi Germany and

the histories of railway company Deutsche Bundesbahn and insurance company Munich RE.

In a recently published chapter highlighting the content of his report, Kopper (2019) firmly states that Grieger's dismissal and his hiring were not related, though they were publicly announced almost simultaneously.⁹ Kopper affirms that Volkswagen commissioned him after changes in the company's executive board led to the observance of stricter compliance policies, 'as a consequence of the diesel exhaust scandal, the ensuing loss of reputation, and heavy fines against Volkswagen' (Kopper 2019: po.4056).

Access to Documents and Legal Strategy

One of the difficulties in accurately describing the extent of Volkswagen's relation with the dictatorship, according to Kopper, was the absence of documents in the Brazilian subsidiary's archive. Consequently, most of Kopper's claims derived from the archives of the repressive police (DOPS) and the regime's national intelligence service (SNI). The automaker's Brazilian branch kept few documents, mainly annual reports, a corporate magazine for employees, and some photos and advertising material. Brazilian law at the time did not require corporations to build and maintain archives over time. According to Kopper (2019: po.4089), the scarcity of corporate documents made the

⁹ Kopper says that Grieger's discharge happened 'for different reasons and without any relation to the Brazilian case' (Kopper 2019: po.4058). An open letter in Grieger's defence signed by 75 German historians mentioned that the motivation for his departure was a critical review he published of a study of the World War II labour practices of VW-subsiary Audi. See also: (Smale & Ewing 2016).

reconstitution of VW do Brasil's decision-making process much more difficult, although it does not indicate a 'deliberate camouflage strategy'.

Parallel to the independent German historian's endeavour, Volkswagen adopted a different posture regarding the investigation conducted by the MPF. When the workers' civil petition was filed in 2015, the company's executives in Brazil 'decided to keep a low-profile and did not make any efforts to unveil their past' (Kopper 2019: po.4065). Reading through the public record of the MPF's four-year investigation, one notices that Volkswagen's lawyers rarely express their position. They appear only when cited by the prosecution, especially when the MPF requested documents and information about the victims. In these cases, Volkswagen offered brief and limited data, often repeating the company's official views even when it contradicted information from the repressive police's archives. For instance, in 2015, Volkswagen stated to the MPF that it did not have any documentation related to the persecuted employees. In addition, the company said that VW's Industrial Security department's task was to guarantee the security of all their employees as well as the corporate property. Thus, implicitly refusing to comment on the information of both CNV's final report and also the workers' confederation petition to the MPF, which provided documentation of the relationship between the company's department, headed by Colonel Rudge, and the dictatorship's political police.

Behind closed doors, Volkswagen also refused to answer a prosecutors' request for financial information about revenue, profit remittance, and patrimony claiming that such information 'would not have any bearing on the ongoing investigation'.¹⁰ The subject, however, was addressed by Kopper who underscored that Volkswagen clearly

¹⁰ Information retrieved from the Volkswagen case's public record, MPF (fls.541).

profited from the dictatorship's labour policies, strict control of workers' movement, and flat wages, as well as the country's lucrative auto sales. Until 1979, for example, the profit rates on turnover and equity at Volkswagen's Brazilian branch 'stayed at a considerably higher level than at the German parent company' (Kopper 2019: po.4132). The Brazilian authoritarian government, in a similar fashion, also benefited from the large-scale German direct investments — particularly Volkswagen's, which was the largest non-public industrial investor in Brazil, almost at the same level as state-owned Brazilian companies such as Petrobras, Eletrobras, and Vale (Companhia Vale do Rio Doce).¹¹

These assertions show that the dictatorship era yielded a highly profitable, economically successful partnership for both the company and the regime. This is important because it shows the broader scenario that the workers' movement aimed to reveal when they made the civil complaint to the MPF in 2015. Volkswagen was the first accountability case, but the union intends to go even further: to expose the widespread, systematic corporate complicity in human rights violations during the dictatorship. 'The movement hoped to reveal the alliance of companies before, and sustained throughout, the dictatorship to roll back workers' rights and representation that had been won in decades of labour movement struggles' (Payne *et al.* 2020: 139-40).

This more extensive purpose of the workers movement can be traced to their decision to only negotiate with the company collectively as a group and through formal channels, always in the presence of São Paulo State Truth Commission or MPF

¹¹ In 1969, German foreign direct investments in Brazil amounted 1,238 million Deutschmarks, far above any other underdeveloped country and almost reaching that of German investments in France. Until 1986, Volkswagen do Brasil continued to be the biggest foreign affiliate of the German group (Kopper 2019).

officials. This strategy was developed to compel the company to deal with collective claims, such as the creation of a site of memory and a financial fund to assist researchers in further investigating the cooperation between the Brazilian dictatorship and other companies.

Volkswagen tried to neutralise this strategy through legal measures and by betting that a formal legal trial would probably result in limited gains due to the Amnesty Law. The agreement with MPF was reached only in September 2020, after the company's legal team delayed the process in the hope of more favourable conditions. Lucio Bellentani, one of the workers who had survived torture and who had participated actively in corporate accountability efforts, passed away in June 2019 without ever seeing the process reach its end.

Another strategy carried out by Volkswagen was its attempts to divide and conquer solidarity in the worker's movement. There are accounts that the company tried to individually contact some of the victims and offer private reparations, thus weakening the union movement.¹²

In public, however, Volkswagen has tried to position itself as a committed stakeholder in corporate accountability. In November 2015, for instance, a Sunday front-page story in *O Estado de São Paulo*, a leading Brazilian newspaper, headline read: 'Volkswagen seeks to pay reparations for its support for the dictatorship's repression' (Godoy & Silva 2015). In response, the Workers' Forum for Remembrance, Truth, Justice, and Reparation, which represents Volkswagen's former employees in the civil complaint, questioned the company's double standard. They said that

¹² Interview by telephone with Sebastião Neto, coordinator of IIEP (Intercâmbio, Informações, Estudos e Pesquisas) and one of the responsible for the elaboration of the workers' petition, São Paulo, 25 July 2019.

Volkswagen's public commitment did not match its lawyers' hostile attitude toward the prosecutors (IIEP 2016). Another episode occurred when Volkswagen was about to make Kopper's report public, in December 2017, and arranged a public ceremony in the São Bernardo do Campo Volkswagen factory in the presence of executives and union leaders. Some of the victims directly involved in the company's violations, protesting Volkswagen's unwillingness to reach a legal settlement, decided not to show up at the event and instead picketed outside the factory with banners and placards (Nuzzi 2017).

Final Remarks: The 2020 Agreement

In this chapter, we have described the process in which Volkswagen faced accusations of cooperating in the human rights violations of the Brazilian military dictatorship from 1964 to the early 1980s. The civil inquiry that emerged from the workers organisations' allegations came to an end on 23 September 2020. The MPF's investigations concluded, meaning that the prosecutors had to decide whether they would request a formal trial or dismiss the case. Given that the Amnesty Law would surely block a trial, and they did not wish to dismiss the case given the evidence gathered, the prosecutors pursued a third alternative: an agreement with the company.

The September 2020 agreement (*Termo de Ajustamento de Conduta*) between Volkswagen do Brasil and the prosecutors' three branches (federal, state, and labour) includes R\$ 36.3 million in reparations (€5.5 million, \$6.4 million). Most of it (R\$ 16.8 million) will be assigned to individual reparations for former Volkswagen employees who were targets of politically-motivated persecution during the dictatorship period. Another share (R\$ 9 million) will serve as collective reparations, to be disbursed to both federal and regional funds in defence of collective and diffuse rights. The remaining

portion (R\$ 10.5 million) will be donated — according to the company’s wishes — to entities that promote ‘truth and memory’ for the dictatorship’s human rights violations (TAC 2020: 3). The São Paulo section of the Brazilian Bar Association (OAB-SP) will receive R\$ 6 million to finance the construction of a memorial site (*Memorial da Luta pela Justiça*) in honour of lawyers who confronted the military regime’s authoritarianism.¹³ Lastly, the Federal University of São Paulo (Unifesp) will receive R\$ 2 million to support research efforts in corporate complicity, in addition to the R\$ 2.5 million for Unifesp’s Centre of Forensic Anthropology and Archaeology, dedicated to identifying the human remains found in the clandestine pit grave discovered in 1990 in Perus, north of São Paulo.¹⁴ Volkswagen also agreed to ‘issue a public declaration about the facts verified by the investigation’ (TAC 2020: 3). This statement is expected to be published in widely-read São Paulo print media.

The content of the agreement has so far been subject to both praise and criticism (Nuzzi 2020). On the one hand, it is certainly a landmark for Brazilian transitional justice and a victory for the decade-long efforts of the former employees who suffered from Volkswagen’s complicity with authoritarianism. On the other hand, the agreement is criticised for failing to ‘recognise any responsibility’ for the company’s or its former executives and employees’ past actions. ‘How can any harm be repaired if it is not

¹³ OAB-SP has been discussing the creation of the Memorial da Luta pela Justiça for many years, well before Volkswagen’s civil complaint was filed. Some of the signatories of the 2015 initial petition (including IIEP, and union labour groups) have filed an appeal that calls into question the construction of OAB-SP’s memorial site. They claim that such an effort (administered by OAB-SP) would deviate from the original terms discussed between the workers and the company: namely that the memorial site should address specifically the history of the labour movement.

¹⁴ Shortly after the agreement was made public, a federal commission under Bolsonaro’s Ministry of Women, Family, and Human Rights attempted to prevent Unifesp from receiving the funds (Vannuchi 2020).

admitted?', a Brazilian journalist who covered the agreement asked (Fernandes 2020). The final settlement does not compel the company to come to terms with its past complicity.

The terms of the agreement also show that the union movement's intentions regarding corporate complicity go beyond the specific case of Volkswagen. The German-owned carmaker investigation was innovative, as we have pointed out, resulting from a surfeit of allegations, testimonies, and documents. However, the workers aim not only to expose the widespread and systematic nature of corporate complicity during the Brazilian dictatorship, but also to establish a standard of accountability and thus raise the costs for corporate complicity that could impact the private sector's future behaviour (Payne 2019: 139-40). In this sense, it is important to note that, apart from the Volkswagen investigation, the MPF has already set up at least two other inquiries on corporate complicity, though they are in earlier stages. One of them involves docking facilities in São Paulo state (*Companhia Docas de Santos*). The other is investigating charges in the state of Minas Gerais, where Italian-owned automobile manufacturer Fiat allegedly spied on workers in coordination with the dictatorship's repressive apparatus, in a very similar case to Volkswagen's (Cesar *et al.* 2019). Other companies that could be the target of future investigations include Petrobras, São Paulo's Subway Company, Embraer, General Motors, and Ford Motor Company.¹⁵

Given the fact that Brazil is at the beginning of the process of reconstructing the memory of its authoritarian period, decades behind its neighbours, it is fair to argue that there are extraordinary opportunities for scholars that arise from the recovery of

¹⁵ Telephone interview with Sebastião Neto, São Paulo, 25 July 2019.

archives in the country (Blanton 2008: 65). However, the study of corporate complicity in Brazilian repression is especially difficult owing to the destruction of primary sources (Figueiredo 2015). Volkswagen contends that there was no legal obligation to maintain these archives. Other Brazilian companies claim that they do not know where such archives might be stored. That was the case of FIESP, São Paulo's Federation of Industries, whose primary sources could clarify which companies had a relevant role in the 1964 coup d'état. During CNV's mandate, Brazilian researchers had high hopes of accessing both public and private archives. The CNV, formally within the President's Office, potentially had the legal strength to summon corporate-owned archives. Nevertheless, the CNV's internal divisions (Dualibi 2014), and lack of agreement regarding its legal and political scope, blocked such efforts.

The limited access to private sector archives and the agreement's statement exempting Volkswagen from any responsibilities in the company's past violations pose obstacles for corporate accountability in Brazil. Even so, the Volkswagen case could become an important landmark for investigating the collusion between the dictatorship's agents and economic actors. Mobilised civil society groups, such as the Workers' Forum, have increased pressure for truth, justice, and reparation. Domestic institutional innovators, such as the MPF, have responded to civil society demand by translating it into legal action, overcoming significant challenges imposed by the general amnesty. International pressure — in the form of important court decisions, intensive media coverage, and sustained civil society pressure in the company's home country — has also helped Brazilian actors to gain traction in the investigation. The Volkswagen case could become a model for corporate accountability from below within Brazil and beyond its borders.

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