

# Social Mobilisations and Corporate Accountability in Brazil: The Volkswagen Case and the Limits of Legal Settlements



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**Abstract** This chapter examines the legal and political strategies designed and implemented by victims, prosecutors, civil society organizations, and trade unions in Brazil and Germany against Volkswagen do Brasil for its complicity in crimes against humanity perpetrated during the Brazilian dictatorial regime. These strategies gave rise to a controversial agreement, signed in 2020, between Volkswagen do Brasil and the Federal Prosecutor's Office. We provide a framework for critically evaluating the potential and pitfalls of these strategies and analyze the process and terms of the agreement, through an actor-focused perspective that might be useful for subsequent comparative analysis.

## 1 Introduction

In response to its involvement in the repression of its own workers during the Brazilian dictatorship (1964-1985), the Volkswagen subsidiary in Brazil (VW do Brasil) signed a settlement agreement with the public prosecutor's office in September 2020.<sup>1</sup> As a mechanism designed to advance justice in the field of corporate responsibility for complicity in human rights violations in the region, this settlement was an innovation.<sup>2</sup> The agreement terminated the civil actions filed by

This chapter builds upon Bohoslavsky and Goñi (2024), which focuses on the legal implications of the agreement studied in this chapter, including the limitations in achieving its goals in the fields of truth, memory, justice, compensation and deterrence.

<sup>1</sup>VW do Brasil and Public Prosecutor's Office (2020).

<sup>2</sup>Timothy Webster studied the experience of the lesser-known settlement agreements related to Asian victims of Japanese military aggression committed in the context of World War II. He pointed out that an important number of large Japanese companies decided to settle -in spite of

former workers of VW do Brasil who were victims of the dictatorship and who had alleged their employer was complicit in those crimes.<sup>3</sup> The format of the agreement was the outcome of a much activism and a unique set of strategies coordinated and deployed by victims, prosecutors, civil society organizations and trade unions in Brazil and Germany.

In this chapter, we discuss the case against VW do Brasil as an instance of domestic and transnational activism aimed at holding a multinational corporation accountable for its complicity in gross violations of human rights. These cross-border and intersectoral mobilization efforts took place in a variety of arenas, including truth commission, the courts, the media, civil society activism, victim advocacy, national politics, trade unions, corporate governance and academia. These efforts eventually crystalized into a negotiated and agreed upon alternative means to conclude the ongoing civil litigation over the corporate complicity of VW do Brasil. We construct a framework for critically evaluating the promises and pitfalls of these strategies, analyze the process and terms of the agreement, and provide an actor-focused perspective that might be useful for subsequent comparative analysis. In line with the larger thesis of this edited volume, this chapter also underlines that corporate accountability mainly results from the synergistic combination of mobilizations promoted and sustained by civil society and social movements.

## 2 VW do Brasil During the Dictatorship and Its Extraordinary Profits

In 1964, concerned about the economic slowdown and the interventionist measures of Brazilian President João Goulart, the Industrial Association of São Paulo looked favourably upon the overthrow of the government by the military. Friedrich Schultz-Wenk, the CEO of VW do Brasil at that time, was euphoric after the “first coup of the South” and even celebrated the arrest of left-wing sympathizers.<sup>4</sup> More recently, referring to the 1964 coup d’état in an interview with the German journalist Stefanie Dodt, Carl Hahn, the president of the VW Group between 1982 and 1993, simply said: “At that time, it did not bother me. I don’t remember crying about the demise of democracy”.<sup>5</sup> To understand VW’s sympathy for the military coup, one can

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their guaranteed judicial victory- in cases in which victims of forced labor from China and South Korea have filled against them. He remarks that the process as well as the terms of settlements contributed to the project of war reconciliation and highlights that the effectiveness of settlements agreements relies, in good measure, on the presence of what he calls “affective remedies” such as statements, expressions, and manifestations of apology and remorse, beyond the pecuniary. “Satisfaction, and not monetary compensations, primary drives these settlements”. See Webster (2019), p. 316; see also Webster’s chapter in this volume.

<sup>3</sup> VW do Brasil and Public Prosecutor’s Office (2020), clause 8, paragraph 1, 2 and 3.

<sup>4</sup> Kopper (2020), pp. 327–328.

<sup>5</sup> Hahn (2017).

examine the company's 1964 financial disclosures, published in April 1965, wherein the company states that "the revolutionary movement unleashed on March 31 by the democratic forces of the country – and the consequent change of government – provided the conditions for an economic reformulation [...] In 1965, the political and economic situation must be consolidated, creating conditions for a positive development in Brazil".<sup>6</sup>

The coup inaugurated a period of strong growth and the increased concentration of wealth in the country– of which VW do Brasil directly benefitted.<sup>7</sup> During the early years of the dictatorship, the company also benefitted from protectionist policies, including tax exemptions, state loans with negligible interest rates, and import protections. In its 1965 disclosures, VW do Brasil noted that "with the change in the legislation on foreign capital, a new provision for investments is verified. Negotiations for foreign financial assistance concluded successfully".<sup>8</sup> In addition, the state imposed harsh labour policies, in an attempt to discourage and repress the activities of the unions. Between 1964 and 1970, 536 unions were subject to interventions, and thousands of union leaders were impeached and expelled from their positions in their respective unions.<sup>9</sup> Despite the extraordinary increase in VW do Brasil's sales during the period, wages nonetheless shrank. By 1975, the company had expanded considerably, and the number of workers increased dramatically, as a result of state policies that favoured land transport and urbanization.<sup>10</sup> According to Christopher Kopper, until 1979, profits within Volkswagen's Brazilian subsidiary "remained at a considerably higher level than in the German parent company".<sup>11</sup>

### 3 The Search for Truth and Justice: Actors and Dynamics

After the return to democracy, VW's participation in gross violations of human rights during the dictatorship remained outside the spotlight. Everything began to change in 2014, when the Comissão Nacional da Verdade (CNV, National Truth Commission of Brazil) delivered a report to President Dilma Rousseff (2011–2016) which furnished preliminary evidence regarding the collaboration of the VW do Brasil management and the political police (Departamento Estadual de Ordem Política e Social, DEOPS) in *Operação Bandeirantes (OBAN)*.<sup>12</sup> Among their

<sup>6</sup> Volkswagen do Brasil (1965).

<sup>7</sup> Bresser-Pereira (2016).

<sup>8</sup> Volkswagen do Brasil (1965).

<sup>9</sup> Text II of Volume II, CNV (2014).

<sup>10</sup> Almeida de Carvalho Silva (2018).

<sup>11</sup> Kopper (2019).

<sup>12</sup> The Brazilian National Truth Commission (CNV) was established by Law n. 12,528/2011. It began its efforts in May 2012, bringing them to a close in December 2014. The second volume of the CNV offers conclusions on civil complicity with the dictatorship, with a special emphasis on corporate participation.

conclusions: In June 1969, the Brazilian Army, the Police of São Paulo State (Polícia Estadual) and the Federal Police had established a special plan to combat armed and unarmed left-wing activists with direct support from São Paulo-based companies.<sup>13</sup> One of the targets of this special operation was Dilma Rousseff, then a 23-year-old student.<sup>14</sup>

The inclusion of the issue of corporate accountability in the second volume of the CNV report was noteworthy given the fact that truth commissions rarely focus on corporate conduct as part of their institutional mandate.<sup>15</sup> In fact, corporate complicity received unprecedented attention in the CNV report. Two chapters in volume II were devoted to civil complicity with the dictatorship: text 2 refers to the violation of worker's human rights, and text 8 raised the issue of civilians who collaborated with the dictatorship. Moreover, among the truth commissions in Latin America, the Brazilian truth commission reported on the largest number of companies complicit in human rights violations, based on collected testimonies and documents.<sup>16</sup>

In addition to a focus on truth commissions, one of the peculiarities of transitional justice in Brazil is its high degree of decentralization. Alongside the CNV, twelve parallel local truth commissions were set up, in which universities, groups of workers and other autonomous entities participated.<sup>17</sup> These commissions, which encouraged significant social involvement, worked in coordination with the CNV to promote public hearings and the collection of testimonies.<sup>18</sup> The Rubens Paiva São Paulo State Truth Commission was the first to be created, and it completed its work on March 14, 2015.<sup>19</sup> This truth commission collected a large number of testimonies from militant workers who stimulated stronger civil mobilization, and was the only one to make specific recommendations in its final report regarding corporate complicity and the need to carry out further accountability processes.<sup>20</sup>

In 2015, the “Forum of Workers for Truth, Justice and Reparation” took it upon itself to continue the work of the CNV and realize its recommendations by further

<sup>13</sup> Prado Soares y Fecher (2016), p. 477.

<sup>14</sup> See testimony by Dilma Vana Rousseff (2001).

<sup>15</sup> See Payne et al. (2020), p. 73. It is worth noting that in 2006, the Office of the High Commissioner for Human Rights recommended the inclusion of economic issues as part of any truth commission's mandate. See: UN, Rule-of-Law tools for Post-Conflict States: Truth Commissions, (New York: United Nations), p. 9; Also see Federman (2021), who states “as of 2020, the Corporate Accountability and Transitional Justice database reports the half of the approximately forty truth and reconciliation commissions held in recent decades named complicit corporations. Since 2000, for example, commissions in Sierra Leone, East Timor, Peru, the Philippines, and South Africa considered the role of business and industry, positioning these actors as possible perpetrators ... In most of these instances, the reports simply note corporate complicity without describing next steps” (2021), p. 131.

<sup>16</sup> Payne et al. (2020), pp. 123–124.

<sup>17</sup> Moreira da Silva Filho (2023).

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

<sup>20</sup> Almeida de Carvalho Silva (2021).

investigating the role of complicit companies during the dictatorial period.<sup>21</sup> Barred from prosecuting their torturers in criminal trials, a group of thirteen trade unions filed a civil case—running more than 600 pages—against VW do Brasil before the Federal Public Prosecutor’s Office (MPF).<sup>22</sup> This action included the major national unions, such as the Central Workers’ Union (CUT), and regional unions, including the Union of Workers in the Mechanical Metallurgical and Electric Material Industries of Osasco, the Central of Brazilian Trade Unions, and Força Sindical, as well as the Association of the Amnestied Politicians, Retirees, Pensioners and Seniors of the State of São Paulo, among others. Given the context of absolute impunity, civil proceedings were, as one of the former workers said, “the only possible avenue” available at that moment.<sup>23</sup> The claimants called for technical expertise, public hearings, interviews with witnesses and the collection of documents to support the opening of a civil investigation into VW do Brasil’s collaboration in the violation of human rights, including the practices that made these violations possible, the level of participation of the company’s management in the perpetration of crimes, and any benefits obtained by the company as a result of this collaboration.<sup>24</sup>

Among the individuals who filed the case, we need to highlight Rosa Cardoso, lawyer and president of the Rio de Janeiro State Truth Commission, a member of the CNV, and one of the main authors of the aforementioned Volume II of the commission’s final report. She was one of the main “innovative actors” who, in combination with other civil mobilization activities, made it possible to achieve some level of corporate accountability against VW do Brasil. As coordinator of the work group “Dictatorship and Repression of Workers and the Union Movement”, Cardoso was a key actor in collecting and classifying worker testimonies, as well as in promoting the need for public hearings. After contributing to the work of truth telling from below, she played a pivotal role in demanding “institutional accountability” for illegal business behaviour during the coup through the filing of the civil lawsuit. Further signatories of the lawsuit included former deputy Adriano Diogo, president of the São Paulo State Truth Commission, Lúcio Bellentani, Tarcísio Tadeu Garcia, José Braz Sobrinho and Expedito Soares Batista, all former workers at VW do Brasil, and Intercâmbio, Informações, Estudos e Pesquisas (IIEP), an organization that went on to play a key role during the subsequent discovery process. Tarcísio Tadeu would later become the president of the *Heinrich Plagge Association*, an organization established to summon those workers who were involved in the legal process and provide them with legal assistance. The organization was also a forum for the former workers to discuss their strategy in the context of the legal inquiry against the company as well as in the resulting settlement. As Tarcísio Tadeu points

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<sup>21</sup> Moreira da Silva Filho (2023), p. 128.

<sup>22</sup> *Ibid.*

<sup>23</sup> BBC (2020).

<sup>24</sup> Almeida de Carvalho Silva (2021).

out, their positions were widely discussed among the former workers in assemblies organized by the association.<sup>25</sup>

Once filed, the charges were redirected to the São Paulo Regional Procuracy of Citizens' Rights (Procuradoria Regional dos Direitos do Cidadão, PRDC), an agency attached to the MPF. In response to the pressure exerted by the claimants, prosecutors decided to carry out a thorough investigation.<sup>26</sup> Authorities commissioned political scientist Guaracy Mingardi and criminal lawyer Martin Carone dos Santos to collect evidence, documents, and testimonies to support any claims.<sup>27</sup> A civil inquiry was opened in 2016, supported by three departments internal to the Brazilian Prosecution Service (MP): the MPF, through the São Paulo Procuradoria Regional dos Direitos do Cidadão (PRDC), the Prosecution Service of the State of São Paulo, and the Public Labour Prosecution Office (MPT), through São Bernardo do Campo's procuracy.<sup>28</sup> In practice, this allowed the discovery process to become a kind of *sui generis* truth trial, ultimately facilitating the reconstruction of the complicity between the company and the dictatorship.<sup>29</sup>

In 2016, the Brazilian Ministry of Justice devoted an entire edition of its *Revista Anistia Política e Justiça de Transição* (Political Amnesty and Transitional Justice Journal) to "Cooperação Econômica com a Ditadura" (Economic Cooperation with the Dictatorship).<sup>30</sup> The research contained therein reveals the volume, depth, and persistence of the complicity of a significant number of companies and business-people with the Brazilian dictatorship.<sup>31</sup> It analyses how this concerted campaign by various companies and the state against workers and anyone who opposed the economic policies that concentrated wealth among the elite resulted in a deterioration of the living conditions of the majority of the population and increased inequality across the country.<sup>32</sup> Yet, the prospects for corporate accountability remain daunting. After so many years, impunity for state and non-state actors persists nearly absolute in Brazil. The Amnesty Law of 1979 (No. 6683) has deprived victims of the dictatorship of their right to take the perpetrators to court to be tried and punished for their crimes. In addition, victims have suffered the effects of an official denialism promoted by the highest levels of the state during the Bolsonaro administration (2019–2022).<sup>33</sup>

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<sup>25</sup> Tadeu (2022).

<sup>26</sup> The actions were processed first by the Federal Public Prosecutor's Office (Public Civil Lawsuit No. 1.34.001006706/2015-26) and then the Public Prosecutor's Office of the State of São Paulo (Public Civil Lawsuit No. 14.725.0001417/2015-7) and the Ministry of Labor (Public Civil Lawsuit No. 000878.2016.02.001/3).

<sup>27</sup> See Ministério Público Fiscal, Ministério Público do Estado do São Paulo (2020). See Mingardi & Carone dos Santos (2017).

<sup>28</sup> Moreira da Silva Filho (2023), pp. 128–129.

<sup>29</sup> Payne et al. (2020).

<sup>30</sup> Bohoslavsky and Torelly (2016).

<sup>31</sup> *Ibid.*

<sup>32</sup> *Ibid.*

<sup>33</sup> Caroline Silveira Bauer (2019).

In April 2010, the Federal Supreme Court affirmed the constitutionality of the Amnesty Law.<sup>34</sup> Conversely, that same year, the Inter-American Court of Human Rights, in *Gomes Lund et al. v. Brasil*, concluded that the Amnesty Law did not comply with Brazil's international obligations and ruled that Brazil was required to take the necessary steps to repeal the law and ensure accountability.<sup>35</sup> Subsequently, on March 15, 2018, the Inter-American Court of Human Rights condemned the state of Brazil in *Herzog et al. v. Brazil* for violating the rights and judicial guarantees and protection of life of the journalist Vladimir Herzog, who was tortured and murdered in a detention centre (Destacamento de Operações de Informação - Centro de Operações de Defesa Interna) in the city of São Paulo in 1975. During the proceedings, the Court reiterated the incompatibility of the Brazilian Amnesty Law with the American Human Rights Convention in cases of serious human rights violations.<sup>36</sup>

## 4 The Complicity of VW do Brasil: Main Findings

In its joint report entitled, “Human Rights, Business and Transitional Justice: The role of the VW do Brasil in political repression during the military dictatorship”, published in 2020 by the Federal Public Prosecutor's Office,<sup>37</sup> the Public Ministry of the State of São Paulo and the Public Ministry of Labor, concludes that the company's cooperation with the dictatorial regime went well beyond political sympathies or commercial interests: “In collusion with the management of the parent company in Germany, the Brazilian branch, by decision of its management, became directly involved in the political persecution of opponents of the dictatorial regime”. The report describes the routine practice of betraying workers to the political police, exposing them to illegal abductions and torture, the use of company resources to illegally detain workers, physical and mental torture on company premises, and the participation of the company's Industrial Security Department as a *longa manus* of the political police in conducting interrogations and investigations even outside the company, among other criminal acts. The report notes that the company participated in the fabrication of false information about the whereabouts of workers while they were imprisoned and subjected to torture. The surviving records of the political

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<sup>34</sup> Federal Supreme Court (2010).

<sup>35</sup> Inter-American Court of Human Rights (2010).

<sup>36</sup> Inter-American Court of Human Rights (2018).

<sup>37</sup> Volkswagen Assina Acordo com Ministério Público Sobre Repressão na Ditadura, Ministério Público do Estado de São Paulo, <https://mpsp.mp.br/w/volkswagen-assina-acordocom-ministerio-publico-sobre-repressao-na-ditadura> [<https://perma.cc/3SYW-2JWW>] (translated by authors); Direitos Humanos, Empresa e Justiça de Transição: O Papel da Volkswagen Do Brasil na Repressão Política Durante a Ditadura Militar, Relatório Conjuntivo, Ministério Público Federal, [https://www.mpsp.mp.br/documents/portlet\\_file\\_entry/20122/2679806.pdf/55488978-129e-6f5d-5abf-50e4fb8824f5](https://www.mpsp.mp.br/documents/portlet_file_entry/20122/2679806.pdf/55488978-129e-6f5d-5abf-50e4fb8824f5) [<https://perma.cc/NAU4-URLA>].

police show how VW's industrial security department, which was presided by a military, provided the police with information about its workers, including full name, picture, affiliation, physical features, worker ID, employment period, political activities, and any known participation in strike actions or the creation and distribution of pamphlets.<sup>38</sup> For instance, Idalécio Custodio da Silva was reported to be involved in the distribution of political propaganda and, therefore, was "under observation".<sup>39</sup>

One major target of labour repression policies was the Communist Party of Brazil (PCB), which had cells in several companies. Once identified by internal VW controls, such cells were reported to the police, thus providing information about Communist engagement within the industrial sector.<sup>40</sup> The archives of the political police contain a document that identifies the specific PCB cell operative in VW, and provides evidence of the close cooperation between the company and the repressive forces.<sup>41</sup> After the creation of the document, in 1972, six VW workers were arrested: Amauri Danhone, Annemarie Buschel, Antonio Torini, Geraldo Castro del Pozzo, Heinrich Plagge and Lúcio Antonio Bellentani. According to Bellentani, VW not only provided the information, but also facilitated the facilities for the illegal arrests, interrogations and torture.<sup>42</sup> After the initial abduction, they were transferred to clandestine detention centres.

In the second volume of its report, the CNV identified a litany of documents that prove VW do Brasil's cooperation with police security organs.<sup>43</sup> One document from 1980 mentions a report written by a security guard who witnessed a speech to VW employees by Luiz Inácio Lula da Silva, who was a union leader at the time and would later become president of Brazil, in which he warned workers that the company was probably monitoring them. In particular, he called attention to Colonel Adhemar Rudge, the head of security who participated in the arrest of Lúcio Antonio Bellentani.<sup>44</sup>

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<sup>38</sup> Federal Public Prosecutor's Office, Public Ministry of the State of São Paulo and Public Ministry of Labor (2020), p. 58.

<sup>39</sup> Arquivo Público do Estado de São Paulo (1974).

<sup>40</sup> *Ibid.*

<sup>41</sup> *Ibid.*

<sup>42</sup> CMV (2012), p. 49.

<sup>43</sup> CNV (2014).

<sup>44</sup> *Ibid.*, Volume II, p. 67.



## 5 VW do Brasil's Strategy

Faced with these allegations, the head of VW's historical archive, German historian Manfred Grieger, decided to launch an investigation in 2014 to establish their authenticity.<sup>45</sup> In a public statement, Grieger stated that the company would investigate "all indications of possible participation by Volkswagen do Brasil employees in human rights violations during the military dictatorship, and identify those responsible for these acts".<sup>46</sup> He subsequently travelled to Brazil to collect and evaluate evidence of the company's involvement with the authoritarian regime.<sup>47</sup> In September 2015, he also took part in a meeting with Pedro Machado, a trade unionist, researchers and victims at the MPF in São Paulo.<sup>48</sup> According to the BBC, Grieger's intention was to "get in touch with victims of the Brazilian military dictatorship and seek more information about the relationship between Volkswagen do Brasil and Brazilian institutions at that time".<sup>49</sup> He proposed to "develop a memorial concept together with other Brazilian institutions, such as trade unions, and to put it into practice".<sup>50</sup> The increasing international pressure on VW in addition to the bad publicity generated by the investigation in the public domain seems to have strained the relationship between Grieger and his employer; the historian was subsequently dismissed in October 2016.<sup>51</sup>

Several reports connected Grieger's dismissal with his investigation of VW's Nazi past or to his criticism of a study that linked the involvement of Audi—a Volkswagen subsidiary—with the Nazi party. Grieger was critical of the report, which, in his opinion, underestimated the relationship between Audi and the Nazi party and minimized the use of slave labour in the concentration camps. Grieger's dismissal mobilized the German academic community: In an open letter signed by seventy-five scholars, they not only accused VW of constraining Grieger's academic freedom, but also expressed their doubts about the continuation of investigations into the company's past, "in particular into allegations of collaboration with Brazil's military leaders in the 1970s".<sup>52</sup>

In response to the public scandal surrounding Grieger's removal,<sup>53</sup> VW hired a professor of economic history at the University of Bielefeld in Germany, Christopher Kopper, to replace him.<sup>54</sup> VW assigned him the task of re-analyzing the case to assess company's complicity with the dictatorship and its participation in any

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<sup>45</sup> Silva et al. (2022), p. 171.

<sup>46</sup> Neher (2014).

<sup>47</sup> Silva (2018).

<sup>48</sup> Neher (2014).

<sup>49</sup> BBC (2020).

<sup>50</sup> Neher (2014).

<sup>51</sup> Silva et al. (2022).

<sup>52</sup> Smale and Ewing (2016).

<sup>53</sup> H-Soz-Kult (2016).

<sup>54</sup> Silva et al. (2022), p.171; Kopper (2017), p. 126.

violations of the human rights of its workers.<sup>55</sup> As such, the company continued to hire experts instead of subjecting the case to a court investigation. This is problematic in view of the conflict of interest inherent to experts evaluating the persons or companies that hired them.

In his report, “VW do Brasil in the Brazilian Military Dictatorship, 1964-1985. A Historical Study”, Kopper concluded that, “the leadership of Brazil’s VW exhibited unreserved loyalty to the military government and shared the objectives of its domestic and economic policy”.<sup>56</sup> The investigation also revealed the close and ongoing links between VW’s Department of Occupational Safety and the police, which resulted in the abductions and torture of several employees who were involved in union activities or were critical of the government or the company.<sup>57</sup> On the profits made by VW, the report reveals: “Government wage controls and restrictions on trade unions kept pay levels lower than they would have been in a pluralistic democracy with freedom of pay bargaining and the right to strike. VW do Brasil, and ultimately also parent VW, profited from the suppression of fundamental workers’ rights”.<sup>58</sup> According to Kopper, both VW do Brasil and VW executives in Germany looked favourably on the military dictatorship and deliberately ignored growing concerns about human rights violations, tactically approving the ongoing institutionalized cooperation between the Department of Occupational Safety and the repressive political police.<sup>59</sup>

This cooperation had severe consequences for the six staff members who were detained, arrested, and tortured in 1972. The political police could never have identified those engaged in subversive activities if VW do Brasil’s Department of Occupational Safety had not spied on company employees and delivered the relevant information to authorities regardless of the consequences. However, the seriousness of the criminal consequences that could arise from this fact pattern—whether it be at the level of authorship, necessary participation or complicity—went unnoticed by the author. In his report, Kopper instead highlighted the role of the head of VW do Brasil’s Industrial Security Department, the Brazilian Army officer Adhemar Rudge, and attributed all responsibility for the crimes committed to him, as if these crimes had been the work of an isolated and single-handed agent, devoid of any economic rationale.<sup>60</sup>

In 2018, at the annual assembly of the Association of Critical Volkswagen Shareholders in Germany, Christian Russau, a member of the association and activist, demanded that VW take a stand on the findings in the report, and accused the executive board and board of management with negligence. In his statement, Russau set out the contents of both Kopper and Mingardi’s reports and demanded that the

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<sup>55</sup> Silva et al. (2022), p.171; Kopper (2017), p. 126.

<sup>56</sup> Kopper (2017), p. 126.

<sup>57</sup> *Ibid.*

<sup>58</sup> Kopper (2017), p. 112.

<sup>59</sup> Kopper (2020), p. 343.

<sup>60</sup> Kopper (2017), p. 50.

company apologize “in full and in a sincere and public manner to the victim workers [...] so that Volkswagen finally assumes its historic responsibility”.<sup>61</sup>

On 14 December 2017, the company held a ceremony at its headquarters in São Bernardo do Campo featuring Christopher Kopper, Pablo Di Si (the Argentinian president of Volkswagen in Latin America), and the president of the ABC metal-workers’ union, Wagner Santana, during which the publication of Kopper’s report was announced and a plaque for the victims of the dictatorship was unveiled.<sup>62</sup> Volkswagen do Brasil, in a statement released during the ceremony and unveiling of the plaque, declared that “Volkswagen recognizes its moral responsibility for the injustices that occurred during the military dictatorship in Brasil. Volkswagen do Brasil negotiates constructively with victims of the dictatorship and with the Brazilian Public Prosecutor’s Office”.<sup>63</sup> Pablo Di Si said in his speech that “we deeply regret those episodes that may have occurred at that historic moment in open disagreement with the values of the company”. The plaque reads: “In memory of all the victims of the military dictatorship in Brasil. For human rights, democracy, tolerance and humanity. Volkswagen”.<sup>64</sup> Certain former workers, including Lúcio Bellantani, were invited to take part in the ceremony, but they opted to stay outside the factory next to a banner that read “We don’t want a party. We want justice”. The workers criticized the isolated way in which the report was produced, without any dialogue with workers or reference to the previous MPF-São Paulo investigation.<sup>65</sup>

On 14 March 2021, VW do Brasil published a three-paragraph declaration in the two main newspapers in the state of São Paulo. The company failed to acknowledge any liability for its actions or those of its directors and employees, and instead argued that the amounts to be paid out were in fact voluntary “donations” for social and cultural projects related to the promotion of truth and memory regarding gross human rights violations during the civil-military dictatorship.<sup>66</sup> As such, the company signed the agreement without publicly acknowledging its participation in gross human rights violations.<sup>67</sup> The final paragraph stated: “In unconditional defence of the democratic state of law, Volkswagen deeply regrets the human rights violations which occurred at this historical moment which are in total disagreement with the company’s values and regrets eventual episodes involving former employees and their families. Volkswagen recognizes that respect and promotion of human rights is a shared responsibility of all economic actors and society”.<sup>68</sup>

Yet, the former workers’ strongest critique focused on the company’s position that collaboration with the regime stemmed solely from certain members of the

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<sup>61</sup> Russau (2018).

<sup>62</sup> Maciel (2017); Struck (2017).

<sup>63</sup> Agência EFE (2017).

<sup>64</sup> Struck (2017).

<sup>65</sup> Bedinelli (2017).

<sup>66</sup> See Silva et al. (2022).

<sup>67</sup> Almeida de Carvalho Silva (2018).

<sup>68</sup> Volkswagen do Brasil (2021).

industrial safety department, instead of acknowledging it an institutionalized/corporate practice. This argument was based on a sentence in the Kopper report that stated that the head of the company's industrial safety department "acted on his own initiative, but with the tacit knowledge of the management". The company was criticized for trying to individualize responsibility without acknowledging the collaboration of the organization. As Lúcio Bellantani argued, their participation in the ceremony proposed by Volkswagen would suggest that they agreed with the content of the report and could be "used by them [Volkswagen] as a sign of 'done, we've dealt with the past'".<sup>69</sup>

The company adopted an obstructive stance through the process. In addition to numerous attempts by its lawyers to delay the process, Volkswagen also refused to respond to a request from prosecutors for information on its revenues, profit remittances and assets, claiming that such information "would have no relevance on the ongoing investigation".<sup>70</sup> According to the coordinator of the IIIEP, Sebastião Neto, Volkswagen also attempted to divide and coopt the solidarity of the workers' movement, including contacting some of the victims individually to offer them direct compensation and thus undermining the union movement.<sup>71</sup>

VW do Brasil's lawyers contested the final report produced by the MP by means of their own 40-page document. The company argued that despite the researcher Christopher Kopper having found VW responsible for human rights violations and complicit with agents of the dictatorship, this was not the position of the company, but only the conclusion of a research. In reference to different parts of the MP's final report, the company stated that the conclusions were based on assumptions and generalizations, supported only by circumstantial evidence.<sup>72</sup> Conversely, the company's own external experts had cross-checked Kopper's conclusions with VW's archives and found several inconsistencies. VW argued that Kopper's report did not present sufficient evidence, and that the researcher failed to specify which documents he was referring to, or if the documents mentioned were ever presented by the company.<sup>73</sup>

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<sup>69</sup> Struck (2017).

<sup>70</sup> Colla de Amorim et al. (2024), p. 273.

<sup>71</sup> *Ibid.*

<sup>72</sup> Almeida de Carvalho Silva (2021).

<sup>73</sup> Moreira da Silva Filho (2023).

## 6 The Agreement and Its Interpretations

On September 23, 2020, VW do Brasil signed an adjustment of conduct agreement with the Federal Public Prosecutor's Office that closed any claims of complicity initiated by former workers who were victims of the Brazilian dictatorship.<sup>74</sup> It is noteworthy that despite the fact that the IIEP and other civil entities were initially involved in the campaign to open a civil inquiry in 2015, the *Compromise of Adjustment Conduct* (TAC) was negotiated exclusively by the MP after the civil case started. In other words, the agreement was entirely negotiated and settled between VW do Brasil and the MP, but excluded the participation of those entities that had provided the initial impetus. The TAC stipulated a payment of R\$ 4.5 million to the Fund for the Defence of Diffuse Rights, and the same amount again to the Special Fund for the Reparation of Injured Diffuse Interests, as well as R\$10.5 million to the Memorial for the Struggle for Justice—an initiative developed by the São Paulo chapter of the Brazilian Bar Association (OAB/SP) and the Centre for the Preservation of Political Memory—and the Federal University of São Paulo (UNIFESP). After the conclusion of the agreement, the company decided to grant the additional amount of R\$16,8 million to the Volkswagen Workers' Association (Heinrich Plagge Association) as “reparations”. The amount paid to the victims was not part of the TAC, although it was included in the case file and subsequent communications made by the MP. In return, the three civil actions filed against VW were closed and any future lawsuits involving these crimes blocked.<sup>75</sup>

The agreement can be interpreted from different perspectives. On the one hand, this settlement, unprecedented in Brazil, has played a key role in disclosing the relationship between VW do Brasil and the dictatorial regime. Corporate responsibility for serious human rights violations during Brazil's civil-military dictatorship had never before been discussed in-depth in Brazilian society, nor had there been any attempt to judicialize it given the Brazilian state's hostility to accountability for gross human rights violations committed by the dictatorship. From this point of view, the organizations and actors linked to the victims interpreted the agreement with VW do Brasil as a great achievement, since a large multinational company was, for the first time, forced to acknowledge human rights violations committed against workers. In various public demonstrations, Rosa Cardoso, and representatives of the Heinrich Plagge Association and IIEP, among others, stressed the unprecedented nature of the agreement and emphasized that it should serve to launch further investigations into other companies accused of serious human rights violations.<sup>76</sup> This event had an extraordinary impact in the national and international

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<sup>74</sup> The *Compromise of Adjustment Conduct* (TAC) was signed by representatives of the Federal Public Prosecutor's Office, the Public Ministry of the State of São Paulo, the Public Ministry of Labor and VW do Brasil (2020) (VW do Brasil and Public Prosecutor's Office 2020).

<sup>75</sup> Prado Soares and Ferreira Bastos Arantes (2022).

<sup>76</sup> Cardoso et al. (2020).

media, which resulted in strong pressure on the company to negotiate with the public prosecutor's office.

On the other hand, these same social actors were unequivocal in pointing out the limits of the agreement, including the failure to guarantee a memorial to the workers' struggles. In a document made public in August 2020, certain signatories of the initial agreement, such as Adriano Diogo, Christian Russau, Rosa Cardoso, and Sebastião Neto (IIEP coordinator), highlighted the importance of building a place of memory conceived and managed by the organizations involved in the case that could be "visited and known, and that also works to produce and disseminate knowledge on the subject [because] it means reaffirming that the memory of the workers, as well as that of all those who resisted the civil-military dictatorship, is not for sale".<sup>77</sup> The aim of a memorial was thus not promote the collective right to the truth and the memory and educate people about corporate complicity during the dictatorship.<sup>78</sup> Despite the fact that memory-work has long been considered a useful transitional justice tool throughout the world to re-build civil society after mass violence,<sup>79</sup> the construction of a space of memory –initially considered a non-negotiable outcome—was not included in the final version of the agreement. In all the public demonstrations held after the TAC was signed, civil society organizations and other actors involved in the process pointed out that the lack of a memorial site was one of the main flaws of the agreement. In this sense, the social actors sought to mobilize people against the agreement in public demonstrations and online events.<sup>80</sup> As the TAC was signed during the COVID-19 pandemic during a period of enforced social distancing, online events were often the only means to demonstrate.

Despite the absence of a memorial, the agreement was signed and ratified by the public prosecutor's office, thereby rejecting the requests for reconsideration by trade unions and other civil society organizations seeking to challenge the TAC. In addition to the absence of a memorial, the TAC made no mention of VW do Brasil's responsibility or the payment of direct reparations to affected workers. On the contrary, the agreement made clear that "VW do Brasil enters into this conduct adjustment without acknowledging any responsibility of its own or of its managers, employees or agents for the acts and facts investigated".<sup>81</sup> For this reason, the signatories of the initial agreement appealed the decision to the Federal Civil Rights Prosecution (PFDC). The trade union organizations that had initially assisted the MPF and contributed to the opening of the inquiry argued that the organizations that were to benefit from VW's financial contributions had no links to the working class. Their arguments were based on the fact that the Fund for the Defence of Diffuse Rights "has its main initiatives related to the areas of combating corruption and consumer law, while the OAB-SP's Memorial for the Struggle for Justice is known

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<sup>77</sup> Diogo et al. (2020).

<sup>78</sup> See Inter-American Commission of Human Rights (2014).

<sup>79</sup> See Lessa (2013), Darn (2015), Federman (2021).

<sup>80</sup> *Ibid.*

<sup>81</sup> Public Prosecutor's Office (2021), p. 2.

to be focused on the work of lawyers who resisted the military dictatorship and which, although praiseworthy, is not related to the working class memory that is the subject of the Inquiry”.<sup>82</sup>

The request also pointed out a contradiction between the civil inquiry and the TAC proposal wherein the inquiry highlighted the company’s responsibility, while the TAC absolved the company of any responsibility of its own or that of its executives, employees or agents. In addition, the agreement did not fulfil the demands made in the initial claim for an investigation into corporate complicity and the economic benefits accrued by the company. In addition to these issues, the payments were made “merely as a donation (as if out of benevolence on the part of VW) [...] which would mischaracterize the real nature of these sums as compensation for human rights violations”.<sup>83</sup> Thus, the signatories criticized the lack of acknowledgement on the part of VW do Brasil, as well as the ostensibly charitable nature of the payments earmarked for future research, while recognizing the value of the agreement as a milestone for accountability and the fight for reparations. They stated that “VW do Brasil, by its own deliberation, will promote donations to entities that develop projects to promote memory and truth in relation to human rights violations that occurred in Brazil during the military dictatorship from 1964 to 1985”.<sup>84</sup>

Despite these critiques, the Federal Prosecutor’s Office for the Rights of the Citizen confirmed the agreement on 15 January 2021, and thereby rejected the complaints presented by trade unions and other civil society organizations. In denying the request for reconsideration, the Public Prosecutor’s Office responded to the questions, alleging the lack of a prior project for the construction of the memorial, the Fund for the Defence of Diffuse Rights’ commitment to history and memory, the long period of the investigation which, due to its duration, ran the risk of “never reaching any conclusion, resulting in irreversible damage to the memory and truth of the workers affected by VW do Brasil’s conduct in the period under analysis”. In addition, it emphasized that the term “donation” did not distort the real nature of the funds paid, as well as the educational value of the investigation, since “Brazilian society, through this civil investigation, will have access to consistent and in-depth information to recover the memory and the truth, with the unequivocal demonstration of VW do Brasil’s participation in the violations perpetrated by the organs of repression during the military regime”.<sup>85</sup>

Neglecting the opportunity to carry out a conventionality control under the Inter-American human rights system regarding the obligations negotiated by the company and the public prosecutor’s office, the reviewing authority concluded that the arguments of the complainants were insufficient to declare the agreement invalid. Indeed, the Prosecutor considered that the agreement constitutes “a true administrative *leading case* that paves the way for future proceedings that will allow Brazilian

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<sup>82</sup>Diogo et al. (2020).

<sup>83</sup>*Ibid.*

<sup>84</sup>VW do Brasil and Public Prosecutor’s Office (2020).

<sup>85</sup>Public Prosecutor’s Office (2021).

society to move forward in terms of respect of human rights, especially those of workers, by companies established in the national territory”.<sup>86</sup>

Although it was contested, the TAC was signed, highlighting the payment of R\$19.5 million. The remaining R\$16.3 million, intended as compensation to affected workers, was not part of the TAC agreement, but was included in the inquiry through a Private Instrument of Donation. R\$4.5 million were earmarked for research projects; these funds, managed by Universidade Federal de São Paulo, resulted in a public call for scholars to submit research projects on the subject of corporate complicity during the dictatorship. In work that is still underway, approximately 55 experts are investigating the activities of Petrobras, Fiat, Companhia Docas de Santos, Itaipu, Josapar, Paranapanema, Cobrasma, Companhia Siderúrgica Nacional (CSN), Aracruz and Folha de S. Paulo – a list has drawn up by the public prosecutor’s office based on previously gathered evidence. According to the project’s general coordinator, the objective is not limited to academic research, but research “aimed at gathering evidence for the public prosecutor’s office to open legal actions, inquiries or administrative procedures against these companies”.<sup>87</sup> Thus, despite its limitations, the VW do Brasil case has provided some value through the formation of a consensus among the organizations involved, the funding of new investigations, and the creation of new possibilities for the judicialization of complicit companies. This reflects the ambiguous nature of the TAC, which was both celebrated by the network of organizations that worked with the public prosecutor’s office on the investigation and critiqued by them for falling short of its ambitions, revealing the distance between “the possible agreement” and “the ideal agreement”.<sup>88</sup>

This ambiguity is illustrated by the first clause of the TAC, which required VW do Brasil to make a public statement about the facts contained in the investigation but did not require the public prosecutor’s office to approve the wording of this statement. On the contrary, the secrecy of the statement was guaranteed by the TAC, meaning that other interested parties did not have access to its content until after it was published. As part of the TAC, the company was only obliged to make a public statement to be published in the Sunday newspapers with the highest circulation in the state of São Paulo, noting the facts uncovered as part of the investigations that were the subject of the TAC. When it was finally published, VW do Brasil’s statement made it appear as if the company was acting voluntarily and transparently, motivated by its “long-term commitment to the country”, by claiming to have been “the first company in the automotive sector to examine its history during the period of the military dictatorship in Brazil.” In so doing, the company insinuated that it had initiated the investigation itself, neglecting to mention that the whole process had only been carried out after a mass mobilization by sectors of civil society together with the public prosecutor’s office.<sup>89</sup> Instead, the company stated its

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<sup>86</sup> Ibid.

<sup>87</sup> Domenici (2023).

<sup>88</sup> Valério et al. (2021).

<sup>89</sup> VW do Brasil and Public Prosecutor’s Office (2020); Sindicato Popular (2021).



commitment to transparency and the sharing of available information, and highlighted its collaboration with the public prosecutor's investigation, all the while omitting how it withheld and delayed the delivery of documents and information.<sup>90</sup>

Furthermore, the payment agreed in the TAC is described in the published statement as a voluntary action by the company with the aim of promoting the defence of diffuse interests and reparations for the victims of diffuse rights violations. As such, VW do Brasil used a punishment provided for in the TAC, namely the obligation to communicate the content of the investigation, to instead promote its brand and the company's role as a corporate citizen. If communication to society is part of the instructive and educational process that guarantees that acts of this nature are not repeated, then VW do Brasil's statement reveals the ambiguity and deficiency of the TAC's terms, in so far as a public statement that should have been used by the company to publicly assume responsibility, was unable to obtain any kind of statement of guilt on the part of the company. Upon publication of VW do Brasil's public statement, the TAC moreover noted that "there will be no additional statement, response or reply from the MPF, MPSP and MPT, or from VW do Brasil itself". This declaration, however, did not include statements by any of the other organizations involved in the TAC or VW do Brasil's victims.

## 7 Conclusions

A number of factors make this process worthy of detailed study: the variety of actors that participated in the process and the intersectoral alliances they established; the different interests and agendas promoted by each of them; the transnational, national and federal dimensions of the case itself; the often controversial involvement of academia in the investigations; the innovative tools used by the parties involved to promote their views; the use of public shaming as a means of achieving some level of justice; the creative remedies implemented to achieve transitional justice goals in adverse contexts; and the ambiguous outcome of the agreement reached.

We have identified certain lessons that can be drawn from the case studied in this chapter. First, the degree of corporate accountability reached—even if insufficient as compared to the intended objectives—was mainly due to the concerted national and transnational activism of victims and their lawyers, human rights organizations, and trade unions. The role of "innovative actors" constitutes a key driver, even in tardy and adverse transitional justice processes. They were the main protagonists, filing the initial complaint and then sustaining it momentum over the following years.

Second, the specific investigative work engaged in by truth commissions and the fact that many companies involved in gross violations of human rights during the

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<sup>90</sup> *Ibid.*

dictatorship were mentioned in their reports helped make the arguments more compelling within the public discourse. Indeed, the context in which the São Paulo State Truth Commission made specific recommendations about corporate accountability paved the way for victims and civil society to bring their case to court. Without the important work carried out by truth commissions, civil proceedings and even the subsequent negotiations would have been impossible.

Third, the pressure exerted on VW headquarters in Germany was crucial to forcing the company to launch an internal investigation on its involvement during the dictatorship. Yet, it is worth remembering that corporations do not take their commitments to full disclosure and the respect of scholarly independence beyond what is strictly needed to protect their reputations, while still making sure that (legally) sensitive information is not revealed.

Fourth, as this case shows, academia can play a significant role in the elucidation of the truth, but it cannot replace knowledge processes carried out by the legal system. The report prepared by Mingardi & Carone dos Santos was vital to clarifying the facts and identifying those responsible for the crimes committed, and is thus a prime example of an effective cooperation between the public prosecutor's office and academia in the investigation of corporate complicity in crimes against humanity. As for the Kopper report, despite the criticism of its limitations, it was also a crucial document in so far as it not only revealed important information, but also represented a—circumscribed—acknowledgement of responsibility on the part of VW.

Fifth, the commitment of and coordination between the three organs of the Brazilian Prosecution Service—the Federal Public Prosecutor's Office, the Public Ministry of the State of São Paulo, and the Public Ministry of Labour—were key to advancing the investigation and eventually opening the door to the final agreement.

Sixth, once the claim was “institutionalized” in courts, the original claimants (victims, trade unions and social organizations) were no longer decisive or veto players in the process, and their claims became sidelined. The process ultimately expropriated the conflict from the groups that had initially formulated the claim and thus ignored the voices of its main protagonists—many of whom had contributed a great deal to the implementation of these transitional justice measures in the first place.

Seventh, the case shows that careful consideration should be given to the corporate tactic of attempting to negotiate with victims separately as a way of undermining the collective nature of any claims for reparations. Given the asymmetries that often exist between the parties engaged in transitional justice measures such as the case of Brazil, state agencies should be called to address imbalances, including by carrying out a “control of conventionality”, which means verifying that the terms of agreements are in line with Inter-American standards for the protection of human rights.<sup>91</sup>

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<sup>91</sup> Bohoslavsky and Goñi (2024), p. 517.

Eighth, the agreement reached by the prosecutor's office and VW do Brasil was heavily critiqued by both victims and other claimants. When designing transitional justice measures, the continued participation of those affected by human rights violations should be an indispensable component of the process before, during and after the implementation of any transitional justice measures. The voices of the victims should never be dismissed.

Ninth, as the terms of the agreement were not seriously tested against existing human rights standards, the final outcome evinces remarkable lacunae in terms of its ability to achieve any type of lasting transitional justice or strengthen accountability standards in terms of corporate complicity—all of which weakened the social and political legitimacy of the accountability process and its outcome.

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