

Transitional Justice and Protracted Accountability in Re-democratised Uruguay, 1985–2011

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Abstract. This article analyses the protracted process by which democratised Uruguay has come to terms with its legacy of human rights violations. Central to this process has been the nature of Uruguayan transitional policies and their more recent partial unravelling. Due to the negotiated transition to electoral democracy, civilian political elites approached the transitional dilemma of balancing normative expectations and political contingency by promulgating legal immunity, for years avoiding initiatives to pursue trials or launch an official truth commission, unlike neighbouring Argentina. A constellation of national and transnational factors (including recurrent initiatives by social and political forces) eventually opened up new institutional ground for belated truth-telling and accountability for some historical wrongs – and yet, attempts to challenge the blanket legal impunity failed twice through popular consultation and in a recent parliamentary vote. Each time, the government officially projected a narrative that sacralised national consensus and reconciliation, now enshrined in two sovereign popular votes, and the adoption of a forward-looking democratic perspective.

Keywords: transitional justice, human rights violations, impunity, accountability, historical memory

Societies that have undergone periods of civil unrest, repression and human rights violations often face a tortuous process of coming to terms with the legacy of atrocities. They hold contrasting views of what happened and find it difficult to reconstruct consensus, all the while debating whether and how to make those responsible accountable for their past deeds. Furthermore, they must decide whether to push for justice, ask forgiveness from the victims, require expiation from the perpetrators, select policies of compensation and

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material and moral reparations, and introduce plans to honour the memory of the dead, through which they may eventually reach a stage of reconciliation.¹ The literature on transitional justice has come to acknowledge the holistic character of such processes, that ‘no single measure is as effective on its own as when combined with the others’.² Research has also stressed how protracted this process can be, characterised by constant tensions between demands for accountability and the pragmatic needs of post-conflict and post-authoritarian institutional stability – that is, between normative expectations and political contingency.³

Uruguay offers an emblematic case of holistic and protracted confrontations with the past that have taken place in multiple forms over different periods. In comparative terms in the Southern Cone, the policies of closure embraced by the democratic government that followed the civilian–military dictatorship of 1973–85 contrasted sharply with those initially pursued by President Raúl Alfonsín following the breakdown of authoritarianism and transition in neighbouring Argentina. However, they closely resembled the path chosen by Brazil, where a 1979 law of amnesty originally geared to cover political opponents of the military regime was applied during the process of democratisation to secure legal immunity for members of the repressive forces.⁴ Likewise, in contrast to Argentina or Chile, which had official truth

¹ See David A. Crocker, ‘Reckoning with Past Wrongs: A Normative Framework’, *Ethics and International Affairs*, 13: 1 (1999), pp. 43–64; Luis Roniger and Mario Sznajder, *The Legacy of Human Rights Violations in the Southern Cone* (Oxford: Oxford University Press, 1999); and Alexandra Barahona de Brito, Carmen González Enríquez and Paloma Aguilar (eds.), *The Politics of Memory: Transitional Justice in Democratising Societies* (Oxford: Oxford University Press, 2001), especially the chapters by Rachel Sieder (‘War, Peace and Memory Politics in Central America’, pp. 161–89), Richard Wilson (‘Justice and Legitimacy in the South African Transition’, pp. 190–217) and Nanci Adler (‘In Search of Identity: The Collapse of the Soviet Union and the Recreation of Russia’, pp. 248–302).

² International Center for Transitional Justice (ICTJ), ‘What is Transitional Justice?’, 2009, available at <http://ictj.org/sites/default/files/ICTJ-Global-Transitional-Justice-2009-English.pdf>; Alexandra Barahona de Brito, ‘Transitional Justice and Memory: Exploring Different Perspectives’, paper presented at the IPSA congress in Santiago, July 2009.

³ See Elin Skaar, ‘Truth Commissions, Trials – or Nothing? Policy Options in Democratic Transitions’, *Third World Quarterly*, 20: 6 (1999), pp. 1109–28; Richard Falk, *Human Rights Horizons* (New York: Routledge, 2000), pp. 199–216; Priscilla B. Hayner, *Unspeakable Truths: Confronting State Terror and Atrocity* (New York: Routledge, 2001); Louis Bickford, ‘Transitional Justice’, in Dinah Shelton (ed.), *Macmillan Encyclopedia of Genocide and Crimes against Humanity* (Detroit, MI: Macmillan Reference, 2004), pp. 1045–7; and Theodore Blank, *Measuring Transitional Justice in Latin America* (Ottawa: Carleton University, Centre for Security and Defence Studies, WP 06, 2007).

⁴ There are also differences: while the Supreme Court in Uruguay ruled the Law of Expiry unconstitutional when addressing cases in 2009, the Brazilian Supreme Court upheld the amnesty law in 2010 after a challenge by the Brazilian Bar Association on the basis that the law did not cover the crime of torture, which was declared exempt from amnesty in the 1988 Constitution. The federal prosecution service also failed in its attempt to bring test cases

commissions early on in the political transition, 15 years passed in Uruguay before an official truth commission on past human rights violations was established in 2000 to draw up an authoritative and agreed-upon version of state crimes committed under the authoritarian dictatorship. This delay was more akin to Brazil's experience, where a truth commission promised towards the end of the Lula government was finally announced by President Dilma Rousseff in 2011.⁵ Uruguay's transitional path reflects the decision of the political class leading the process of re-democratisation to draw a line under the past without addressing normative expectations of truth and accountability, the initial success of these policies and the attempts by sectors of civil society to undo them. This article aims to explain the somehow paradoxical existence of many advances towards belated truth-telling and accountability for some historical wrongs combined with the recurrent failure to undo the framework of legal immunity.

The study starts by indicating the impact of the legacy of human rights violations on modern Uruguayan society. There follows a review of the 1985 amnesty for political prisoners and the 1986 Law of Expiry, designed to close the book on past abuses but soon challenged by sectors of civil society in a first, unsuccessful, referendum in April 1989. The following sections discuss how the proclaimed closure, seemingly achieved through the referendum results and the way these were interpreted through a narrative sanctifying national consensus in the 1990s, continued to unravel in the following decade.

My analysis shows the long-term impact of the dictatorship both on the rhetoric of fear of institutional destabilisation and on the existence of a civic public domain in which the human rights issue has been kept alive and aired in many different ways, eventually challenging the early unwillingness of the political class to deal comprehensively with this legacy. In spite of the enduring framework of legal immunity, the early reluctance of state officials to recognise many of the thorny human rights issues generated by the period of authoritarian repression, and the lack of initial anchoring of the discourse of human rights in the general population, an important shift has taken place. Collective and public memory about the past has become denser with the onset of new debates, fresh revelations and unrelenting campaigning. These have enabled demands for truth and accountability to be recognised and incorporated into the institutional agenda through alternative means.

The article identifies the key elements that have led to a partial dismantling of the transitional mechanisms of immunity and impunity: first, the

against alleged torturers through the civil, rather than criminal, courts. Brazilian society has never seen a mass campaign to overturn the law.

⁵ Like Uruguay, Brazil has had only an unofficial report prepared by the Archdiocese of São Paulo, covering abuses from 1964 to 1979 and published as *Brasil: nunca mais* in 1986.

intermittent pressures from existing and new networks and organisations demanding truth and accountability; second, persistent public debate; third, the transnational effects of revelations about violations perpetrated under the regional umbrella of Operation Condor; fourth, the debates about the past triggered by the publication of works alluding to or promoting historical memory; fifth, emblematic cases to determine the whereabouts of children of forcibly disappeared individuals and the remains of victims; sixth, generational and political shifts that brought to power forces more committed to the plight of victims and their relatives; and seventh, international pressures stemming from cases presented before the Inter-American system of human rights. The setting of a new state agenda in the last decade has reflected – if at first hesitantly, and even now subject to the criticisms of human rights organisations – the weight of these factors and particularly the tireless demands for accountability not only from within Uruguay but also from beyond its borders, primarily through the Inter-American system.⁶

The Impact of Human Rights Violations

The agro-export, financial and state-expansive model of development launched by José Batlle y Ordóñez in the early twentieth century was predicated on a shared vision of the nation centred on the recognition of citizenship and universal entitlements. For decades thereafter, Uruguayans endorsed a state narrative of civility, public peace and development, buttressed by universal education, welfare benefits and the promotion of public culture. Yet, by the 1960s and early 1970s the country's inability to sustain that model of development was generating protest, violence and counter-violence, undermining the viability of its democratic institutions. The cycles of social and political mobilisation led to the growing involvement of the armed forces in government, the shutting-down of the Parliament, and by June 1973, the establishment of a civilian–military dictatorship that imposed authoritarian controls and engaged in widespread repression, long-term imprisonment and torture of citizens with left-wing sympathies.⁷ After nearly a decade, a transition to democracy began during which, primarily during the 'transitional dictatorship' of General Gregorio Álvarez (1981–5), a tug-of-war began over

⁶ Agenda-setting is defined as 'the politics of selecting issues for active consideration'. R. W. Cobb and M. H. Ross, *Cultural Strategies of Agenda Denial* (Lawrence, KS: University Press of Kansas, 1997), pp. 3–6; David Dery, 'Agenda Setting and Problem Definition', *Policy Studies*, 21: 1 (2000), pp. 37–48.

⁷ Servicio de Paz y Justicia (SERPAJ), *Uruguay: nunca más. Informe sobre la violación de derechos humanos (1972–1985)* (Montevideo: SERPAJ, 1989), esp. pp. 111–15 and 425–30; Roniger and Sznajder, *The Legacy of Human Rights Violations*, chap. 1.

the institutional arrangements and extra-institutional mechanisms needed to face up to the recent past.⁸

The experience of the civilian–military dictatorship affected not only Uruguay’s democratic institutions but also its own view of itself as a civilised nation able to work out consensual agreements, with a model democracy and exemplary welfare state. While it forced a collective search for policies to address the dark legacy of authoritarianism, paradoxically the armed forces and the former guerrilla movement of the Movimiento de Liberación Nacional (Tupamaros National Liberation Movement, MLN-Tupamaros), as well as major parts of the main political parties, brought into the restored democracy a shared view that what happened under the dictatorship was the result of an internal war in which both camps ‘played their role’. Significantly, many Tupamaros continued to view long-term imprisonment and torture as part of the price paid for their revolutionary struggle. They at first rejected a discourse of victimhood as one they identified with human rights organisations, and shifted towards it only belatedly and pragmatically rather than as a matter of principle.⁹

Following the negotiated return to democracy in 1985, society at large faced the problem of weighing its restored democratic institutionalism against possible policies of truth and justice for the victims of repression, while reconstructing a sense of shared collective identity. The Uruguayan solution was to pass two laws. The first was a law of amnesty for most political prisoners (Ley de Pacificación Nacional) in March 1985, to allow their release (with the exception of those serving sentences for murder), restore their property and compensate them for financial losses. The second was the December 1986 Law of Expiry (Ley de Caducidad de la Pretensión Punitiva del Estado or Law of Expiry on Punitive Claims by the State), which granted principled immunity to members of the security forces implicated in human rights violations through acts committed prior to 1 March 1985. Additional measures included the establishment of a National Repatriation Commission, which operated until 1989, charged with assisting exiles who wished to return home, and a law for the reinstatement of state officials demoted during the dictatorship. Thus, symmetry was supposedly established, which was meant to lead to some closure.

⁸ Charles Guy Gillespie, *Negotiating Democracy: Politicians and Generals in Uruguay* (Cambridge: Cambridge University Press, 1991), pp. 79–191; Gerardo Caetano and José Rilla, *Breve historia de la dictadura* (Montevideo: Ediciones de la Banda Oriental, 1987).

⁹ On the Left, see Vania Markarian, *Left in Transformation: Uruguayan Exiles and the Latin American Human Rights Networks, 1967–1984* (New York: Routledge, 2005); and on the armed forces, see Mariana Achúgar, *What We Remember: The Construction of Memory in Military Discourse* (Amsterdam and Philadelphia: John Benjamins, 2008).

The Law of Expiry was challenged twice, in a referendum on 16 April 1989 and a plebiscite on 25 October 2009.¹⁰ Both initiatives failed to annul the law and undo the blanket immunity that the negotiated and constrained transition to democracy granted the military. In 2010 the Frente Amplio (Broad Front), the ruling coalition, moved to end this cycle of legal impunity through a parliamentary bill that would have declared unconstitutional the 1986 amnesty law. But on 20 May 2011, this bill, which had already passed through readings and approval in the upper chamber, failed to pass in the lower chamber due to the abstention of one Frente Amplio deputy. The Law of Expiry cannot now be challenged again with a simple majority until 2015. These failures underscored both the degree to which human rights violations have reverberated at the heart of the public agenda and the inability of society to change the format of legal impunity for decades despite major breakthroughs in other domains, discussed in later sections.

Post-authoritarian challenges

The terms of a secret agreement between the main political forces and the military command, known as the Naval Club agreement of 1984, allowed a carefully managed transition to democracy and the rebuilding of the public sphere. However, the pact did not generate a consensual interpretation of past events and experiences shared by the victims, the perpetrators and the various institutional actors. For years, the military opposed any opening of the issue of past human rights violations and did not acknowledge any institutional responsibility for abuses committed before 1985, threatening to destabilise the democratic situation if policies of accountability reached the state agenda. Years after the transition to democracy, some members of the armed and security forces began to confess or acknowledge past deeds, even while maintaining a narrative that justified their acts using the ‘internal war’ argument.¹¹

Due to the tensions generated, only partial solutions could be reached when the topic took centre stage. Moreover, the inability to put human rights violators on trial and the lack of institutional acknowledgment or information about the fate of victims killed and disappeared at the hands of the security forces transformed the legacy of violations into a focal point of dissent for years. The lack of institutional engagement displaced the issue into the realm

¹⁰ The Uruguayan Constitution allows citizens to call a one-off referendum to challenge laws approved by Parliament or to propose changes to the Constitution by means of a plebiscite held at the same time as a general election.

¹¹ Mariana Achúgar, ‘Between Remembering and Forgetting: Uruguayan Military Discourse about Human Rights (1974–2004)’, *Discourse and Society*, 18: 5 (2007), pp. 521–47.

of public debate and culture.¹² It shifted the initiative to civil society, where different sectors held contrasting visions of what should be done, and tried to impose their claims and narratives about the past on others, in a symbolic struggle in which each tried to gain public recognition and credibility. As the social group most involved, the victims – particularly the relatives of those murdered or abducted forcibly and vanished without a trace – and their supporters tried to keep the issue in the public eye, while the military attempted to marginalise its deeds and establish some relativism into the interpretation of recent history. Bystanders and members of the political class participated in intense debates, according to their different agendas.

The resulting policies thus became involved in a series of meaning-producing practices and constructions of contrasting historical narratives, refracted through a multiplicity of angles, which created a conflict-ridden and pluralistic public domain. Rather than disappearing with the outcome of the first referendum of April 1989, the issue of rights violations acquired renewed implications as it was displaced time and again into multiple realms beyond the state through the interplay between the social transformation of historical memory and eventual state policies.

Immunity as State Policy: The Law of Expiry and the First Referendum

The Law of Expiry was a ‘clean slate’ law, which many saw as resulting from the secret pact that enabled the transition to democracy and was denounced by opposition politician Wilson Ferreira Aldunate. The law provided immunity to members of the security forces involved in acts that constituted violations of basic human rights, with some explicit exceptions such as cases involving illicit enrichment or rape and cases under legal prosecution, and many unstated exceptions that would open a door for future prosecutions. Under the law, the executive retained the right to order investigations into the situation of ‘persons reportedly detained by the military or the police and of the missing children allegedly abducted under similar circumstances’. Likewise, in order to control the armed forces in the future, the Senate was put in charge of promotions of military officers. The Ministry of Defence took over the supervision of the intelligence services, and the Parliament assumed the supervision of the military academy.

Up until 1973, the political process under civilian rule in Uruguay had seen the political class reach decisions through negotiated agreements on core issues, while the social movements weakened and failed to exert a significant

¹² For detailed institutional analyses, see Alexandra Barahona de Brito, *Human Rights and Democratisation in Latin America: Uruguay and Chile* (Oxford: Oxford University Press, 1997); and Roniger and Sznajder, *The Legacy of Human Rights Violations*.

influence on the politicians' discretion and agenda. This has been defined as the pattern of Uruguayan *partidocracia*.¹³ From this perspective, the Law of Expiry should be seen as a major attempt by politicians to revalidate this style of decision-making while preventing debates from flooding the public sphere around an issue with explosive implications for the consolidation of the restored democracy. A new scenario emerged, however, when the initiative was seized by civil society, which campaigned to annul or abrogate the Law of Expiry. According to the 1967 Uruguayan Constitution, a referendum on a new law could be called if 25 per cent of the electorate required it.¹⁴

Those who opposed granting impunity to the perpetrators of gross human rights violations organised to collect the necessary number of signatures to trigger a public referendum on the Law of Expiry, which required mass mobilisation. The movement was initiated by the MLN-Tupamaros, and promptly found itself under the direction of the Committee of Mothers and Relatives of Disappeared Persons, represented by María Esther Gatti de Islas, together with the widows of assassinated politicians Héctor Gutiérrez Ruiz and Zelmar Michelini, Matilde Rodríguez and Elisa Dellepiane. NGOs, especially the Servicio de Paz y Justicia (Peace and Justice Service, SERPAJ), were also instrumental in the coordination of the effort. Beginning in January 1987, the campaign was conducted under the umbrella of the Comisión Nacional Pro-Referéndum (National Pro-Referendum Committee, CNP), led by the above women.¹⁵ With the memory of repression still fresh in the minds of Uruguayans, civil society was challenging the legal mechanism devised by the government and the ruling coalition by forcing the issue into public debate.

During the signature drive, the pro-referendum forces tried to project an image of self-organising networks and pluralist forces within civil society, independent of party political organisations, although the drive was supported by some political figures. The latter announced that their signing the petition was in no way meant to influence the way citizens should vote in the referendum itself, but was rather intended to allow that decision to be based on the popular vote. They portrayed the Law of Expiry as contradicting

¹³ Gerardo Caetano and José Rilla, *De la tradición a la crisis: pasado y presente de nuestro sistema de partidos* (Montevideo: CLAEH-Ediciones de la Banda Oriental, 1985); Edy Kaufman, 'El rol de los partidos políticos en la redemocratización del Uruguay', in Saúl Sosnowski (ed.), *Represión, exilio y democracia: la cultura uruguaya* (Montevideo: EBO, 1987), pp. 25–62; Luis E. González, *Estructuras políticas y democracia en Uruguay* (Montevideo: Fundación de la Cultura Universitaria, 1993).

¹⁴ The 1967 Constitution is still in force, although amended especially extensively in 1996.

¹⁵ 'El llamamiento', *Brecha*, 66, 30 Jan. 1987, p. 2; Jo-Marie Burt, *El Pueblo Decide: A Brief History of the Referendum against the Impunity Law in Uruguay* (Montevideo: SERPAJ, 1989); Americas Watch, *Challenging Impunity: The Ley de Caducidad and the Referendum Campaign in Uruguay* (New York: Americas Watch Committee, 1989).

universally recognised legal principles of justice and equality before the law and as contrary to the 'purest traditions of the Nation'. The CNP stressed that mobilisation, fundamental to overcoming fear and regaining self-confidence to make decisions after the military interregnum, was motivated by the free civic conscience of the people. Campaigners made many references to history, the founding fathers, public leaders and reformers of the country, and the message was geared around the pursuit of ethics in public life, justice, truth, hope, happiness and the value of human life. They stressed the basic values of Uruguayan society and the regeneration of humanity from the bottom up. The long process of mobilisation reached out to all sectors of society through music and food events in local associations, meetings reviving the memory of grassroots forms of organisation, and door-to-door visits.¹⁶

Some key issues became central in public debate, both before and after the collection of signatures. Both supporters and opponents of the Law of Expiry endorsed issues such as the need to find ways to move forward, consolidate democracy and prevent a return to dictatorship, support for principles of justice and equality before the law, and the redefining of the role of the armed forces. That is, although each camp came at the debate from diametrically opposed perspectives, they shared some core concerns as a basis for collective reflection, among them ensuring future democratic vitality and installing respect for legality.¹⁷

On 16 April 1989, the referendum was conducted with 84.7 per cent turnout. The results upheld the Law of Expiry by a margin of over 13 points (56.6 per cent in favour and 43.3 per cent against). Despite a majority of citizens surveyed on the eve of the referendum identifying this as an ethical issue, many opted for the pragmatic option at the ballot box.¹⁸ A major split emerged between the capital city and the rest of the country, with Montevideo supporting the defeated motion. This trend persisted in the elections later that year when the Frente Amplio won the municipal elections in the capital city, while a conservative faction of the National Party, or Blancos, won control of the national government.¹⁹

¹⁶ Roger Rodríguez, 'Las brigadas verdes, puerta a puerta: el referéndum llama dos veces', *Brecha*, 24 Feb. 1989, p. 5; and Document No. E05/59 002.1111/ 1987.04.04, at SERPAJ's Documentation Centre, Montevideo.

¹⁷ Madres y Familiares de Detenidos Desaparecidos del Uruguay (MFDDU), *El referéndum desde familiares* (Montevideo: MFDDU, 1990).

¹⁸ See the results in *Búsqueda*, 20 April 1989, pp. 4–5.

¹⁹ In Montevideo, 56.6 per cent voted to overturn the law. Opponents of the law got majority support in smaller towns and rural areas among the unemployed, office workers and professionals, but not among housewives, pensioners and unskilled workers (Roniger and Sznajder, *Legacy of Human Rights Violations*, pp. 88–9). On the implications of the shift that started then, see Daniel Chávez, 'Decentralisation and Participatory Urban Management in Montevideo', available at www.ucm.es/info/femp/red/articulos/montevideo.doc.

The enshrining of a national consensus

The referendum did not produce consensus between those who won that day and those who were defeated. Nonetheless, the political forces in power tried to convince civil society that the issues had been settled once and for all, sanctifying the idea of a collective consensus for the sake of the progress of the reconstituted democracy. Symbolically, the leading political figures who advocated closure declared on several occasions that the victory should not be cause for celebration. According to them, the referendum would not create 'winners' or 'losers'. Military circles also expressed their satisfaction with the results of the referendum, reiterating their narrative of historical justification for the strategy they had adopted and their sense of a mission accomplished.²⁰

Opponents of the law accepted the results of the referendum but promised not to forget the 'martyrs' and to continue their fight for accountability. They added that the forces supporting legal immunity had won the day but had not convinced society, claiming that 'history would have the final say' and would vindicate their demand for justice.²¹ The main achievement of the CNP had been to turn the question of accountability and impunity into the core theme of a widespread mobilisation of civil society over a two-year period. Rather than remaining confined to the realm of private life or a particular sector of society, the issue of human rights had come to dominate the public agenda, even among those who opposed the annulment of the Law of Expiry. The CNP had reached all social strata and garnered respect. The marshalling of opinion across all sectors of the population had forced traditional politicians to face the issue, strengthening democracy through public identification of problems and open debate. According to this view, the greatest benefit of the campaign was the galvanising of civil society. For the first time in modern Uruguayan history, grassroots movements and social organisations had acted collectively without the top-down leadership of politicians. Over the two years leading up to the referendum, the sentiments expressed by broad sectors of civil society had concrete impacts on the future of the democratic public sphere and the direction of the political system. Although professional politicians once again dominated the public agenda, the setback suffered by the Colorado party in the presidential elections of October 1989 sent a clear signal that citizens expected politicians not to act solely on the bases of contingency and political calculations, but also to bear in mind ethical considerations.

Despite the continued antagonistic visions of the victims and the perpetrators, the forces in power spun a narrative intended to enshrine the

²⁰ *Búsqueda*, 20 April 1989, p. 8.

²¹ This claim was reflected throughout the press: in *La República*; in *La Hora*, the journal of the Uruguayan Communist Party; and in *Mate Amargo*, the journal of the MLN-Tupamaros, 17–20 April 1989.

idea of consensus. Figures of speech were used to reaffirm the unity of Uruguayans and declare the matter definitively settled. Immediately after the polls closed, President Julio María Sanguinetti expressed satisfaction with the demonstration of civility by the Uruguayan people. He stated that the issue 'was resolved at the polls and not by shouting. That is the style of the country. That is to be Uruguayan, to have serenity and peace of mind ... The vote shows the Republic's best traditions.' Sanguinetti added that taking the path of legitimate conflict resolution was a decision typical of the country. 'We must hear the voice of the people ... Most of the country, the vast majority of the country, wants peace, even if we have profound disagreements.'²²

In an interview published in Madrid, the president was even more explicit when asked what he meant when he said that the referendum had completed the transition in Uruguay: 'It means that Uruguay has solved all the problems of the past. The remnants of the discussions during the dictatorship have been resolved. The country is now facing its future.'²³ That a majority had voted to uphold the Law of Expiry served in subsequent years, even in 2010–11, as the basis of repeated arguments by politicians that the debate had been decided once and for all by popular decision. Indeed, at that time, many shared the view that the referendum had also sealed the problem from the legal and political standpoint. The fact that civil society had been mobilised to its full extent and was still defeated increased the legitimacy of the adopted legal formula for avoiding further conflicts and public polarisation. The speeches by Sanguinetti and others that reaffirmed national reconciliation were attempts to symbolically project such closure into the public domain, a goal that was achieved only temporarily.

In the short term, the results of a referendum open to all citizens and initiated from the grassroots solidified legal immunity. It also allowed the armed forces to evade institutional responsibility for human rights violations for much longer than in neighbouring countries. For over a decade, the Law of Expiry and the failed referendum closed the road of legal prosecution in hundreds of cases and not one perpetrator was brought to trial. The protracted process of mobilisation defined by debate and failure at the polls also limited the impact of the human rights violations report *Uruguay: nunca más* that SERPAJ published in September 1989. The report was compiled by a team of eight SERPAJ activists, due to the government's failure to set up a possible official truth commission.²⁴ Lacking state support, the report was based on

²² *La República* (Montevideo), 17 April 1989, p. 5.

²³ *El País* (Madrid), 19 April 1989, p. 6.

²⁴ The unofficial nature of the investigation, the small sample size and the minimal equipment and support staff available for finding sources and writing resulted in an extensive time delay in the work.

testimonies collected for years by NGOs and on a survey of 313 prisoners tried by military courts, in both Montevideo and the rural areas. The initial print run was 1,000 copies, repeated in two later editions. The timing of its publication, only a few months after the referendum, limited its public impact, in sharp contrast with that of the 1984 Argentine CONADEP report or the 1991 Rettig report of the Chilean Commission of Truth and Reconciliation.

The relative lack of attention to past human rights violations was only temporary. It did not prevent future crises and advances in dealing with the legacy of repression. The unknown whereabouts of the *desaparecidos* who had been targeted by the armed forces of Uruguay in cooperation with those of the neighbouring countries, and of the children abducted with their parents or born in prison, provided fertile ground for further inquiries and revelations and reopened the debate. Also, demands for accountability remained acute around cases of political assassination and claims for material and moral reparation. These and other factors soon became focal points for triggering new public discussion around historical memory in the protracted search for truth and accountability.

Reopened Debates and the Elaboration of Historical Memory

For over five years after the referendum there was a decline in public concern with the plight of the victims. The issue disappeared almost completely from the platforms of political parties, and several attempts to challenge politicians implicated in the dictatorship failed. Army officers were promoted without consideration of their involvement in past repression; human rights activists felt marginalised and resented the willingness of the state to pay reparations to victims who pushed civil claims in order to avoid facing them in court.²⁵

Nonetheless, these years produced a myriad of publications and testimonies by political activists who had suffered torture and prolonged imprisonment, which provided mounting evidence for the debate about historical memory. Testimonies often form a double-edged sword in terms of their broader impact on society. While they promote collective memory, they may also project fear if they do not portray their authors as wilful political protagonists. Thus various victim testimonies stated their explicit purpose of maintaining the historical memory of their resistance to military rule.²⁶ The first testimonies were produced by men, among which stood out a book of prison

²⁵ Aldo Marchesi, *El Uruguay inventado: la política audiovisual de la dictadura* (Montevideo: Trilce, 2001), p. 7; Eugenia Allier Montaño, *Batallas por la memoria: los usos políticos del pasado reciente en Uruguay* (Montevideo and Mexico: Trilce-UNAM, 2010), pp. 93–143.

²⁶ Illustrative are Wladimir Turiansky, *Apuntes contra la desmemoria: recuerdos de la resistencia* (Montevideo: ARCA, 1988); and Alfonso Lessa, *Estado de guerra: de la gestación del golpe del '73 a la caída de Bordaberry* (Montevideo: Fin de Siglo, 1996).

reminiscences by Mauricio Rosencof and Eleuterio Fernández Huidobro, prominent Tupamaros, jailed for 13 and 15 years respectively.²⁷ Over time, the memories of women, some of which took the form of collective testimony, began to appear.²⁸

Likewise, on publication, works of literature and the arts became endowed with contemporary meanings, triggering debate over various interpretations of the recent past. Among works deepening such historical debate was a novel by Tomás de Mattos that became a bestseller only months after its publication in 1988.²⁹ Through the fictional letters of Bernabé Rivera, the half-brother of Fructuoso Rivera, one of General Artigas' lieutenants and later president of Uruguay, the book reveals dark chapters in the history of the 'civilised country'. Even as the plot unfolds in the distant past, the novel reveals the thread of destructive violence that has characterised Uruguay since its birth as a nation. Observers and readers immediately raised the question of whether that violence should be read as part of a bygone era or as a metaphor of a persistent pattern of power relations that has defined Uruguay ever since and persisted into the most recent wave of authoritarianism.³⁰ The debate also had an unintended consequence. While it sparked reflection on the treatment that the indigenous populations received at the hands of the non-indigenous settlers, it also led to the crystallisation of collective identities and claims of historical justice among the former. This resonated particularly among those who saw themselves as the descendants of the original inhabitants of Uruguay. In 1989, they founded the Association of Descendants of the Charrúa Nation (ADENCH), an organisation that has since maintained a visible public presence.³¹

The late 1980s and 1990s also witnessed the publication of a plethora of works contributing to both historical assessments and public debates on the

²⁷ Mauricio Rosencof and Eleuterio Fernández Huidobro, *Memorias del calabozo* (Navarra: Txalaparta-Argitaletxea, 1993). Among earlier testimonies was Ernesto González Bermejo, *Las manos en el fuego* (Montevideo: EBO, 1985); this recounts the experiences of David Cámpora, who was detained in different prisons between April 1972 and December 1980.

²⁸ A group of female former prisoners organised workshops known as *Memoria para armar* in 2001–4 and published a book of testimonies. As a part of public construction of memory, the testimonies were deposited at the Centre for Interdisciplinary Uruguayan Studies of the University of the Republic, as heritage for the entire society. Gabriela Fried, 'Piecing Memory Together after State Terror and Policies of Oblivion in Uruguay: The Female Political Prisoners' Testimonial Project (1997–2004)', *Social Identities*, 12: 5 (2006), pp. 543–62.

²⁹ Tomás de Mattos, *¡Bernabé, Bernabé!* (Montevideo: EBO, 1988).

³⁰ Hugo Achúgar, 'Como el Uruguay no hay. ¡Bernabé, Bernabé! y el referéndum', *Cuadernos de Marcha*, 41 (Feb. 1989), pp. 61–4; Achúgar, 'El Parnaso', in Achúgar, *La biblioteca en ruinas* (Montevideo: Trilce, 1994), p. 99.

³¹ 'Descendientes de charrúas al rescate de la memoria histórica', *La República* (Montevideo), 15 Aug. 2008, available at www.larepublica.com.uy/comunidad/326280-descendientes-de-charruas-al-rescate-de-la-memoria-historica.

recent past, highlighting the long legacy of violence and repression that the hegemonic model tried to relegate to oblivion. Among such works was a series of titles published by Editorial Trilce under its director Pablo Harari. They included the work of Juan Rial and Carina Perelli on myths and political memories; a collective volume on Uruguayan identity edited by Hugo Achúgar and Gerardo Caetano; and a volume edited by Alvaro Rico that suggested looking at the civic–military government as an integral part of Uruguayan history.³² In the theatre, Alvaro Ahunchain produced the piece ‘Where were You on 27 June 1973?’, an explicit reference to the date on which President Juan María Bordaberry dissolved the Parliament and started to rule with the support of the armed forces. Alfonso Lessa published *El estado de guerra*, a book of interviews with testimonies from civilians and members of the armed forces that became a bestseller. Graziano Pascale published his experiences in prison in *Los años sin alma*. Two historians, Isabella Cosse and Vania Markarian, wrote on the cultural policies of the dictatorship on the basis of the textbooks used in schools in the mid-1970s. Luis Udaquiola prepared a work with available information on the case of Vladimir Roslik, one of the last victims, who died under torture in 1984, in the midst of the transition to democracy. Aldo Marchesi published his research on the cultural policies of the dictatorship, showing how these shaped the imaginary of Uruguayan society and thereby promoted wide support for the regime.³³

These works approached the dictatorship in ways that led to a rethinking of the pre-dictatorship period and attempted to demystify previous conceptions about ‘the nation’. This disturbed the self-complacent image of civility that the political elites had tried to recreate. During the transition to democracy, public analyses of the genesis and impact of the military period all characterised it as a cataclysm visited upon Uruguayan society from the outside, ‘victimising’ the

³² Carina Perelli and Juan Rial, *De mitos y memorias políticas* (Montevideo: EBO, 1986); Hugo Achúgar and Gerardo Caetano (eds.), *Identidad uruguaya: mito, crisis o afirmación* (Montevideo: Trilce, 1992); Álvaro Rico (ed.), *Uruguay: cuentas pendientes. Dictadura, memorias y desmemorias* (Montevideo: Trilce, 1995). See also Carlos Demasi, ‘La dictadura militar: un tema pendiente’, in Rico, *Uruguay: cuentas pendientes*, pp. 29–49; and Omar Prego, *Reportaje a un golpe de estado* (Montevideo: Ediciones La República, 1988), p. 30.

³³ Lessa, *Estado de guerra*; Isabela Cosse and Vania Markarian, *1975: año de la orientalidad – identidad, memoria e historia en una dictadura* (Montevideo: Trilce, 1996); Graziano Pascale, *Los años sin alma* (Montevideo: Trilce, 1996); Luis Udaquiola, *Valodia: vida de Vladimir Roslik* (Montevideo: EBO, 1996); Marchesi, *El Uruguay inventado* (Montevideo: Trilce, 2001). Years later, other works started to give equal attention to victims of repression neglected earlier – that is, the exiles and their contribution to the promotion of human rights. Markarian, *Left in Transformation*; Silvia Dutrénit-Bielous (ed.), *El Uruguay del exilio: gente, circunstancias, escenarios* (Montevideo: Trilce, 2006); Silvia Dutrénit-Bielous, Eugenia Allier Montaño and Enrique Coraza de los Santos, *Tiempos de exilios: memoria e historia de españoles y uruguayos* (Colonia Suiza: CeARCI, Fundación Carolina and Instituto Mora, 2008).

entire population. Such a reading was challenged by revisionist views in light of the fact that half of the electorate had opted to support the Law of Expiry in the referendum – the results of the vote demanded an alternative interpretation of the recent authoritarian period. A gap thus opened up between the agenda followed by the political leadership and these revisionist readings of history, pushed forward by social scientists and intellectuals.

While the public arena witnessed new readings of the legacy of authoritarianism, the political class in power continued to lack the political will to ‘reopen old wounds’ and called for national reconciliation. Paradigmatic of this unwillingness was Julio María Sanguinetti, who twice served as president of the republic (1985–90 and 1995–2000). Sanguinetti consistently refused requests to start truth inquiries. He rejected the proposal to open a ‘dialogue table’ between the military and the radical Left, similar to the initiative launched in Chile in August 1999–June 2000. He also rejected the possibility of ordering a judicial inquiry into the whereabouts of the disappeared, perhaps the most acute demand made by civil society.³⁴

The Search for Public Recognition and New State Policies

The consensus that President Sanguinetti tried to render sacrosanct eventually broke down. The debate over the re-signification of Uruguayan collective identity soon became linked to a series of developments that resulted in a more head-on engagement with the legacy of human rights violations. This was at first done hesitantly and then more assertively as it became part of official state policy in the second half of the 2000s.

The first indicator of the break in impunity was a report from the Inter-American Commission on Human Rights (IACHR) in October 1992. This report established that the Law of Expiry was ‘incompatible with Article XVIII (Right to a Fair Trial) of the American Declaration of the Rights and Duties of Man, and Articles 1, 8 and 25 of the American Convention on Human Rights’ and recommended that the Uruguayan government should provide compensation to victims, take steps to clarify what happened and identify those responsible for past human rights violations.³⁵ In April 1993, a similar condemnation was issued by the United Nations Human Rights

³⁴ See Sanguinetti’s criticism of later human rights policies in ‘Julio María Sanguinetti lamenta el desmoronamiento de los modelos de impunidad en Uruguay, Chile, Argentina y España’, *La Nación* (Buenos Aires), 22 Dec. 2006, available at www.derechos.org/nizkor/uruguay/doc/sanguinetti.html.

³⁵ *Mendoza et al. vs. Uruguay*, Cases 10.029, 10.036, 10.145, 10.305, 10.372, 10.373, 10.374 and 10.375, Report No. 29/92, Inter-Am.C.H.R., OEA/Ser.L/V/II.83 Doc. 14 at 154 (1993), October 2, 1992, IACHR, 2 Oct. 1992, available at www.unhcr.org/refworld/docid/3ae6b6d8c.html.

Commission.³⁶ In both cases, the Uruguayan government defended the Law of Expiry on the basis of juridical equivalence with the release of political prisoners, political considerations and the result of the 1989 referendum.

The echo of human rights crises in Argentina and Chile was also heard in re-democratised Uruguay. Revelations that Uruguayans had been murdered and their children abducted and disappeared by the repressive forces of neighbouring countries, in collaboration with the Uruguayan civilian–military regime, drew new attention to one of the grimmest aspects of the transnational network of repression of the Southern Cone, known as Operation Condor.³⁷ It also put human rights centre stage once again in Uruguayan public discourse. In April 1995 retired Argentine Navy Captain Adolfo Scilingo publicly confessed his participation in the flights that transported sedated detainees, including Uruguayans, and dropped them with heavy weights into the ocean. These revelations, the statements of the commander-in-chief of the Argentine army, General Martín Balza, and Catholic Church prelates in Argentina, and the ensuing institutional and public debate there, created waves in Uruguay. In early May 1996, Uruguayan Navy Captain of Fusiliers Jorge Néstor Tróccoli, then an anthropology student, acknowledged that despite not having personally participated in the worst acts, he had fought a war in which the armed forces had tortured and murdered their enemies.³⁸ These and other cases served as a catalyst for the growing demand to renew investigations into the fate of Uruguayan nationals forcibly abducted across the River Plate into Argentina, where many vanished without a trace.³⁹

Likewise, the cases of children who disappeared after their parents were killed by the repressive Southern Cone governments gained resonance during this period. The subject was opened in Uruguay when one of the children, abducted along with his parents, was identified and claimed by his great-uncle, union leader José D'Elia. Other cases that attracted wide public attention over the next decade included the search by Sara Méndez for her son Simón Riquelo, who was born in a concentration camp in Buenos Aires in 1976. Simón's mother had survived the repression and searched tirelessly for her son for years, until they were reunited in March 2002. Another major case

³⁶ Allier Montaño, *Batallas por la memoria*, pp. 106–8.

³⁷ Uruguay participated in the network together with Argentina, Bolivia, Brazil, Chile and Paraguay. Early indications emerged when the Archives of Terror were found in Asunción, Paraguay, in 1992. On Operation Condor, see among others John Dinges, *The Condor Years* (New York: New Press, 2005); and J. Patrice McSherry, *Predatory States: Operation Condor and Covert War in Latin America* (Lanham, MD: Rowman and Littlefield, 2005).

³⁸ Jorge Néstor Tróccoli, *La ira del Leviatán* (Montevideo: Caelum, 1996); Samuel Blixen, 'Quién es Jorge Tróccoli? Mentiras verdaderas', *Brecha*, 10 May 1996; Daniel Gil, *El capitán por su boca muere, o, la piedad de Eros* (Montevideo: Trilce, 1999).

³⁹ Roniger and Sznajder, *The Legacy of Human Rights Violations*, pp. 109–35; McSherry, *Predatory States*.

involved the hunt for the granddaughter of Argentine political activist and poet Juan Gelman, María Macarena, also born in prison in 1976 and vanished until she was identified in Uruguay in March 2000. This case in particular generated intense public interest following heavy pressure on the Uruguayan authorities from intellectuals worldwide and from the Argentine government, leading finally, under newly elected president Jorge Batlle, to state assistance and support in finding María Macarena.⁴⁰ The lack of subsequent information on the fate and remains of the disappeared mother would lead María Macarena and her grandfather Juan Gelman to present a claim before the IACHR that, in 2010, reached the Inter-American Court of Human Rights and created international pressure on the Uruguayan government to undo the legal blanket impunity.

Another case that shaped public opinion over several years and had political consequences was that of Eugenio Berríos, a Chilean biochemist who had worked for the Chilean secret police (Dirección de Inteligencia Nacional, DINA) in the 1970s. He was required to testify in Chile in the Letelier trial in 1991 and was transferred secretly by the Chileans to Argentina and then Uruguay in order to prevent his testimony.⁴¹ Held under 'protective' custody by a military task force without the knowledge of the civilian authorities in now-democratic Uruguay, Berríos attempted to escape, reported to the local police, disappeared again and was assassinated in 1992. Revelations about the case in 1993 created a serious institutional crisis, with President Lacalle threatening to bring to justice those responsible and most of the army generals threatening to resign if any such action were taken. In the end the government sacked a police chief and a senior army officer and claimed that Uruguay had no connection to a case that only concerned Chile, a claim that lost credibility once Berríos' remains were found not far away from Montevideo and were identified in 1995–6. Trials were opened in Uruguay and in Chile, and in 2006 three Uruguayan officers were extradited to Chile to stand trial. The case was interpreted as reflecting the continuing covert cooperation of the security apparatuses of the Southern Cone countries after re-democratisation, and their willingness to perpetrate new crimes in order to cover up the past.

Calls by political and social groups for inquiries into the events that led to the murder of Uruguayan citizens in Argentina increased apace. In 1996,

⁴⁰ See www.pvp.org.uy/sara-justicia.htm.

⁴¹ In the Letelier/Moffit case, former DINA chief General Manuel Contreras and Brigadier Pedro Espinoza were tried for assassinating with a car bomb a former minister of foreign affairs under Salvador Allende and his secretary, a US citizen, in Washington in September 1976. The murder was specifically excluded from the 1978 Amnesty Law in Chile and led to trial in 1993, following democratisation. On the Berríos case, see Mario Sznajder and Luis Roniger, 'The Crises beyond Past Crisis', *Human Rights Review*, 1: 1 (1999), pp. 45–64; and Allier Montaño, *Batallas por la memoria*, pp. 119–26.

Senator Rafael Michelini, the son of assassinated Colorado senator and former presidential candidate Zelmar Michelini, publicly demanded that the commander-in-chief of the Uruguayan armed forces, General Juan Curutchet, follow the example of General Balza, his counterpart in Argentina, who had recognised the role of the armed forces in past human rights violations. Curutchet rejected the suggestion on the grounds that such a statement would generate false expectations and would only serve to once again reopen old wounds. Indeed, until the government banned it in 2005, the armed forces continued to commemorate 14 April as the Memorial Day in the Defence of the Institutions, a date formerly known (between 1975 and 1985) as the Memorial Day for those Fallen in the Fight against Subversion.

Senator Michelini, head of the *Nuevo Espacio* (New Space) political party, and others opted to organise a massive March for Truth, Memory and Never Again on 20 May 1996, the 20th anniversary of the murder in Buenos Aires of his father, of the speaker of the Chamber of Deputies, Héctor Gutiérrez Ruiz, and two other Uruguayan citizens in Argentina. The initiative was supported by politicians, labour organisations, religious, social and human rights groups, the relatives of missing persons, and the victims of military repression. The silent march was planned without speeches. The Uruguayan Parliament then honoured the memory of Michelini and Gutiérrez Ruiz but again refrained from mentioning the involvement of the armed forces in their deaths. The silence that dominated the parliamentary motion and the public march was a reflection of the tacit agreement of major political and military forces not to reopen the debate deemed closed in the referendum. However, marches have continued annually since then under slightly different slogans, for several years stressing the claim for truth and shifting in 2001 and thereafter to demands of accountability and justice after the establishment in 2000 of an official truth commission, the Commission for Peace.

In the years preceding the Commission for Peace, attempts to unblock the search for truth were rejected. There was still fear of encouraging hatred or confrontation, and in some quarters there were claims that efforts to pursue the truth might possibly destabilise the new democracy. In May 1997 Bishop Pablo Galimberti, the bishop of San José, indicated that the Church could mediate, through a peace commission, between the armed forces and the victims in order to obtain information on the whereabouts of the disappeared in a confidential manner. When retired Colonel Luis Agosto supported this idea, saying it would help the grieving process by ‘incorporating all our dead from both sides [of the political divide] into Uruguay’s collective history’, military circles lambasted him. The armed forces as an institution were not willing to cooperate. In January 1998 President Sanguinetti maintained the hard line, stating that there are ‘no wars without missing persons’ and stressing ‘the deep conviction of the executive branch that no act of state authority

could actually meet the demands of the petitioners and achieve the desired result'.⁴²

Similarly, although Uruguay ratified the Inter-American Convention on Forced Disappearance of Persons (1994) in 1996, the first attempts by judges to order investigations to determine the existence of mass graves of desaparecidos, exhume the bodies and return them to their families – without any criminal proceedings against those responsible for their death and disappearance – were severely sanctioned by the higher judicial authorities. This was evident in the so-called 'Carrot case', which had been opened by Judge Alberto Reyes, following a petition filed by Rafael Michelini in March 1997 to locate 150 missing individuals presumed dead after being tortured in military camps. Dr. Reyes' decision to hear the case was reversed by the Court of Appeal, which ordered him to leave the case to the discretion of the executive branch, which would then decide how to proceed according to the Law of Expiry. In turn, Reyes was transferred to a civil court, which many interpreted as punishment for the course of action he had taken.

Nonetheless, by 1999, the issue of human rights violations, the fate of the desaparecidos and the obligation of the Uruguayan state to fulfil international commitments to seek truth and secure justice had returned to the centre of political debate – as reflected in the electoral platforms of the Encuentro Progresista–Frente Amplio, led by Tabaré Vázquez, and the Nuevo Espacio, headed by Rafael Michelini – and had begun to influence even political and state sectors that were initially not fully committed to such an agenda.

Pending Accountability and the Commission for Peace

After Jorge Batlle of the Colorado Party assumed the presidency in 2000, several of the most symbolic demands for truth and justice were translated into state initiatives. President Batlle took various initial steps to circumvent the lack of information provided to the relatives of the disappeared, displaying a willingness to tackle a thorny issue that had remained deadlocked for decades. Until he took up the challenge of investigating child disappearances and opened up a very limited search to discover the fate of the disappeared, no government officials, neither Colorados nor Blancos, had been willing to even acknowledge any pending human rights questions. Whether this shift was due to internal political struggles within the Colorado party, with Batlle using the issue in intra-party factional competition, or due to Batlle's reading of rising public sensibility to the demands for truth and accountability and his

⁴² Gerardo Caetano, *El testamento ciudadano y los riesgos necesarios de la verdad: cuentas pendientes en el Uruguay contemporáneo* (Montevideo: Universidad de la República, 2002), pp. 18–19.

subsequent willingness to co-opt this cause, the newly elected president initiated changes in the course of policy.⁴³

Shortly after his inauguration, Batlle met in person with relatives of the victims and tried to resolve some of the notorious cases of infants who were given new identities after their political activist parents were assassinated and disappeared.⁴⁴ Likewise, in April 2000, he ordered disciplinary actions and the dismissal of General Manuel Fernández from his position as head of the armed forces' joint chiefs of staff. The government's firm action, backed by the commanders of the armed forces, was prompted by the publication in the press of an interview with General Fernández, in which he stated that the search for the whereabouts of the disappeared was part of a continuing war against the country by the same 'enemy' of the 1970s and early 1980s.⁴⁵ Some days later, Batlle officially received a delegation of the Association of Relatives of Victims, becoming the first democratic president to do so in 15 years. While military club officers strongly condemned any form of historical revisionism, the umbrella trade union organisation, the Plenario Intersindical de Trabajadores – Convención Nacional de Trabajadores (Inter-Union Workers' Plenary – National Workers' Convention, PIT–CNT), suggested that the issue should not be avoided any longer.⁴⁶

The change in political atmosphere was also reflected in judicial proceedings. In February–May 2000, Estela Jubette, circuit court judge for administrative litigation cases in Montevideo, decided to accept the writ of *amparo* of the mother of missing teacher Elena Quinteros, to pass the case to the executive branch so that the latter would order an inquiry into the disappearance of her daughter in 1976 in Buenos Aires.⁴⁷ Judge Jubette resisted political pressures and, although the executive appealed the case, this time the Court of Appeals upheld the decision of the judge, who had strongly criticised the inaction of the previous administration. Soon criminal trials in

⁴³ I am grateful to an anonymous reviewer for highlighting debates on why President Batlle changed the course of policy. On the institutional factors shaping factionalised parties in Uruguay, see Mario Bergara et al., 'Political Institutions, Policymaking Processes and Policy Outcome: The Case of Uruguay', IDB Research Paper 5, Washington, DC, 2006, available at <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=844416>.

⁴⁴ Batlle ordered a DNA test to be conducted on a 23-year-old woman who turned out to be the missing daughter of Juan Gelman's son Marcelo and María Claudia García, who were kidnapped in Buenos Aires by the security forces and are still missing. Likewise, the president persuaded a young man suspected of being Simón Riquelo, the missing son of Sara Méndez, to undergo a similar test, although in this case the result was negative. It was not until March 2002 that a federal judge in Argentina ordered a DNA test and confirmed that another young man, now an Argentine citizen, was in fact Sara Méndez's son.

⁴⁵ 'Batlle relevó al general Fernández', *La República* (Montevideo), 7 April 2000, available at www.larepublica.com.uy/politica/7616-batlle-relevo-al-general-fernandez.

⁴⁶ Caetano, *El testamento ciudadano*, pp. 22–3.

⁴⁷ A writ of *amparo* is a legal instrument for protecting an individual's constitutional rights.

other cases would be added, unlocking proceedings aimed at searching for accountability and targeting perpetrators of human rights violations.⁴⁸

Given the increasing tension and rising public debate, in August 2000 President Batlle also established a Commission for Peace, aimed at clarifying the whereabouts of the disappeared.⁴⁹ The Commission was headed by the archbishop of Montevideo, Nicolás Cotugno, and had six members: Father Luis Pérez Aguirre (a Jesuit priest and founder of SERPAJ, replaced after his death by Father Jorge Osorio), the union leader José D'Elia, teacher José Claudio Williman, and the lawyers Gonzalo Fernández and Carlos Ramela Regules. The Commission had the mandate to fulfil 'an ethical duty of the state', taking responsibility for a task considered 'essential to preserve the country's historical memory' and to 'consolidate national reconciliation and ensure peace forever among all Uruguayans'.

Under its limited mandate, the Commission could not require information from the armed forces or proceed to identify those guilty of human rights violations. Instead, when it drafted its final report in August 2003, the Commission had managed to gather full or partial information on those Uruguayans who had been kidnapped, tortured and killed in the clandestine detention centres in Uruguay and Argentina between 1971 and 1981. In its report, the Commission confirmed the abductions and publicly acknowledged that the Uruguayans who died under those conditions had been murdered after being tortured in military barracks; this then justified the excavation of military installations starting in 2005. The Commission's final report also included recommendations to the government such as the need for full reparations to the families of the disappeared, the amendment of the Criminal Code to criminalise torture and enforced disappearances, and the establishment of an official body to continue the work on forced disappearances.⁵⁰ The government endorsed the report and created an agency to continue the Commission's work. It also announced that compensation would be paid to the families of the victims who died in detention centres and to the victims of guerrilla violence, a move that still has not materialised.⁵¹ However, the impact of the Commission was only partial beyond those directly involved and

⁴⁸ Elin Skaar, 'Legal Developments and Human Rights in Uruguay, 1985–2002', *Human Rights Review*, 8 (2007), pp. 58–9.

⁴⁹ *Resolución de la Presidencia de la República no. 858/2000*, 9 Aug. 2000.

⁵⁰ *Informe final de la Comisión para la Paz*, 10 April 2003, available at <http://archivo.presidencia.gub.uy/noticias/archivo/2003/abril/2003041001.htm>.

⁵¹ Presidencia de la República, *Comisión para la Paz, informe final*, Montevideo, 10 April 2003; Louise Mallinder, *Uruguay's Evolving Experience of Amnesty and Civil Society's Response* (Belfast: Queen's University, 2009), pp. 60–4.

affected. In public polls, one-third of those surveyed were unaware that the Commission had issued its final report in 2003.⁵²

New public questioning about the past led to some trials and indictments of members of the armed forces linked to human rights violation cases not explicitly covered by the legal immunity and falling within the hitherto unfulfilled mandate of the executive to investigate these cases, as required by Article I-4 of the Law of Expiry. In this new political scenario, criminal trials of military officers progressed, with the first convictions being made in March 2002. One case involved retired colonel José Nino Gavazzo, who was found guilty of human rights violations. Another case dealt with the participation of 12 officers, including Gavazzo, in the disappearance of persons as part of Operation Condor, with the judge stressing in the verdict that disappearances are a crime against humanity and should not be covered by the Law of Expiry. In a third trial, opened in April 2002, the former foreign minister Juan Carlos Blanco, a civilian who was not covered by the 1986 law, was accused of being co-responsible for the abduction and disappearance of Elena Quinteros. The refusal of Uruguay and Brazil to recognise the primacy of international law in judicial enforcement, in contrast to Argentina and Chile, seemed to be breaking down in Uruguay under the impact of these trials and subsequent international pressure from the Inter-American Court of Human Rights.

The impact of these political and generational shifts was fully felt in the subsequent administration of President Tabaré Vázquez (2005–10). In his electoral campaign, the Frente Amplio presidential candidate had stated that if elected he would maintain the Law of Expiry, yet in his inauguration address he indicated his decision to locate the remains of victims and end the generalised impunity.⁵³ The new administration advanced various initiatives aimed at providing truth, justice and perhaps reconciliation. The president ordered the military to cooperate, but the information on the remains of some of the disappeared provided by the commanders of the three armed forces has been minimal and sometimes misleading. Nonetheless, between July 2005 and October 2006 forensic anthropologists conducted excavations in military grounds and barracks. Even though the remains of only two victims were found (in November and December 2005), the discovery was highly significant and deemed 'historical'.⁵⁴ When the president decided to end the exhumations in October 2006, he announced that the search would move to

⁵² Eugenia Allier, 'The Peace Commission: A Consensus on the Recent Past in Uruguay?', *European Journal of Latin American and Caribbean Studies*, 81 (2006), p. 92.

⁵³ 'Vázquez Tabaré 2005: toma de posesión Uruguay,' available at www.leyes-y-constituciones.org/himnos-nacionales/163-posesion-uruguay.html.

⁵⁴ 'Un día histórico para Uruguay: primer hallazgo de un asesinato en dictadura con datos de las Fuerzas Armadas', 30 Nov. 2005, available at <http://antonio-ladra.lacoctelera.net/post/2005/11/30/un-dia-historico-uruguay-primer-hallazgo-un-asesinado>.

Argentina and appointed a member of *Madres y Familiares de Detenidos Desaparecidos del Uruguay* (Mothers and Relatives of Disappeared Detainees of Uruguay, MFDDU), Javier Miranda, to carry out the inquiries. He also announced on the 20th anniversary of the approval of the Law of Expiry that 19 June would be commemorated annually as Never Again Day (*Día de Nunca Más*), a move that human rights organisations interpreted with mixed feelings, some of them refraining from participating and accusing the government of attempting to put an artificial end to the lingering past. In January 2006 the administration also moved to recognise pensions and reparations to members of the armed forces affected by repression during the dictatorship and the period 1968–73, in the same way that reparations had been granted to similarly affected public employees in 1985 and private employees in 2002.

Soon after assuming the presidency, Tabaré Vázquez also proceeded to interpret Article I-4 of the Law of Expiry in the widest possible way by encouraging judicial inquiries into any case not explicitly covered by the law before a decision was taken to include or exclude the case in regard to the parameters of immunity. Indeed, the Law of Expiry contained several significant loopholes that were duly exploited. First, the law referred only to crimes committed by military and police officials, but did not explicitly mention civilians who had collaborated with the military. Furthermore, there was no start date for the application of the law's jurisdiction, even if until then it was interpreted as excluding human rights violations committed under the governments of Bordaberry and Pacheco Areco. In addition, the provision that amnesty would be granted to officers following orders did not exclude senior officers. Finally, immunity did not cover the disappearances of Uruguayan citizens beyond Uruguay's borders, which accounted for the majority of the cases.⁵⁵

The Law of Expiry gives the executive branch the responsibility of determining which cases are covered by its provisions. In November 2005, Tabaré Vázquez sent to Congress a bill that would interpret the law, aimed at 'reinforcing by legal means what we are already doing within the parameters of the law'. The bill sought to transfer the decisions on the applicability of the law to the courts' discretion, so that they would take it upon themselves to investigate 'until reaching a point where it is possible to decide whether the case is covered by amnesty or not'. Although this strategy of reinterpretation was less risky than trying to repeal the 1986 law, the bill was heavily criticised

⁵⁵ A day after his inauguration, Tabaré Vázquez signed agreements with President Néstor Kirchner of Argentina for active cooperation between the two countries to find new information about the crimes committed under the authoritarian governments, including the whereabouts and remains of those forcibly detained and disappeared.

by the armed forces and the political opposition in terms that indicated that the decision would likely threaten internal peace. Faced with strong opposition, the government decided not to push the legislation. Instead, it became clear to all judges that they could broaden the scope of judicial interpretation of immunity in court, confident that the executive would welcome such actions.⁵⁶

Such a fundamental change in the political will of those in power reinforced the trend of holding trials against agents of the security forces involved in transnational cases of repression of Uruguayans. The prosecution of senior officials was also encouraged. In a case opened in August 2009, the prosecutor accused former president Bordaberry, by then 81 years old, of nine crimes of enforced disappearance and two crimes of aggravated murder committed while Bordaberry was head of the civil–military government in 1972–6. Moreover, the prosecutor accused the former head of state of ‘undermining the Constitution’ when he changed the form of government by signing the decree that truncated the workings of Uruguay’s democratic institutions. In February 2010, the former president was sentenced to 30 years in prison.⁵⁷ Similarly, in late 2009, the courts sentenced other officers, among them General Gregorio Álvarez, de facto president from 1981 to 1985, to 25 years in prison for 37 murders committed in the framework of Operation Condor. Detained since 2007, Álvarez, 83, was convicted of aggravated manslaughter and sentenced to the maximum sentence sought by the prosecutor.⁵⁸

Collective memory and lieux de mémoire

Beyond the institutional measures adopted to advance the search for truth and criminalise past human rights violations, initiatives have increasingly originated in civil society, especially led by many non-governmental groups, some of which formed before re-democratisation and others afterwards. One should mention SERPAJ; the Instituto de Estudios Legales y Sociales (Institute of Social and Legal Studies, IELSUR), providing legal advice and support; the Servicio Ecuménico de Reintegración (Ecumenical Reintegration Service, SER), offering occupational and entrepreneurial assistance to victims of repression and returnees from exile; the Servicio de Rehabilitación

⁵⁶ Mallinder, *Uruguay’s Evolving Experience of Amnesty*, pp. 52–3.

⁵⁷ Mauricio Pérez, ‘Fiscal pidió la condena del dictador Bordaberry a 45 años de reclusión’, *La República* (Montevideo), 10 Aug. 2009, available at www.larepublica.com.uy/politica/376007-fiscal-pidio-la-condena-del-dictador-bordaberry-a-45-anos-de-reclusion; ‘Condenan a 30 años de cárcel a Bordaberry’, *El País* (Montevideo), 11 Feb. 2011, available at www.elpais.com.uy/100211/ultmo-470723/ultimomomento/condenan-a-30-anos-de-carcel-a-bordaberry/.

⁵⁸ ‘Condenan a 25 años a un ex dictador’, *Globedia.com*, 23 Nov. 2009, available at <http://globedia.com/condenan-anos-dictador>.

Social (Social Rehabilitation Service, SERSOC), offering counselling and psychological support to victims and relatives; the Comisión por el Reencuentro de los Uruguayos (Commission for the Re-acquaintance of Uruguayans), facilitating visits by children of exiles residing in Europe; the Centro de Orientación y Consulta (Advice and Consultation Centre, COYC), set up to assist freed prisoners and returnees; the MFDDU; the Asociación de Ex-Presos y Presas Políticas (Association of Former Political Prisoners); the Agrupación de Familiares de Ejecutados Políticos (Group of Relatives of Executed Political Prisoners, AFEP); and many local neighbourhood associations.

Among the initiatives launched by the latter, some have been geared towards the creation of sites of popular memory as well as new contributions towards the redefinition of historical memory in the field of popular culture and practices. In different neighbourhoods, events have been held to commemorate and honour the memory of victims of the repression. In July 2004, for example, the social centre El Galpón de Corrales decided to celebrate the third anniversary of the establishment of a people's library named after León Duarte, to be held '28 years after the death of "Crazy" Duarte and 19 years after the death of the "Dog" Pérez', by inviting people to a panel discussion on their struggle and that of all the missing, on the general strike that the labour movement carried out in response to the coup, on the coordination of repression in the Southern Cone through Operation Condor, and on continuing impunity.⁵⁹

From the mid-1990s, former female political prisoners began to meet regularly after recognising one another in civil demonstrations and marches. In those meetings, which led to the establishment of associations of female detainees, they shared experiences, testimonies and recollections of the period of repression. Working groups created avenues for the expression of suppressed memories and emotional support, and their meetings resulted in discussions on historical memory and shed new light on the specific character of female experiences of repression. In the late 2000s, these women collected more than 300 testimonies, published books of eyewitness accounts and organised public activities aimed at transforming these individual histories into a collective memory.⁶⁰ In November 2007, the mayor of Montevideo, Ricardo Ehrlich, inaugurated the Museum of Memory of Uruguay as a site 'dedicated to recovering the memory of the horrors of state terrorism and the sacrifices of the Uruguayan people against the dictatorship that ruled the country between 1973 and 1985'. The museum aims to strengthen the Uruguayan people's

⁵⁹ 'Memoria desde los barrios', available at <http://uruguay.indymedia.org/news/2004/07/26846.php>.

⁶⁰ Memoriasparaarmar@adinet.com.uy.

sense of national identity by teaching the new generations about the recent history of their country.⁶¹

Civil society also started challenging official decisions about the use of locales that previously served as detention centres during the dictatorship and were put to other use once democracy was restored. Perhaps most notable is the case of the Penal de Punta de Rieles, the main detention centre for women under the dictatorship, and later the headquarters of the NCO School of the Army. The state authorised the proposed use of the property as a penitentiary in order to ease overcrowding in prisons. Opposing such a move, residents of the area and the Asociación de Ex-Presos y Presas Políticas were mobilised, with support from SERPAJ, writing and sending petitions to the president and suggesting alternative uses for the property: as a *lieu de mémoire*, a museum of memories for peace, and so forth. The project of establishing a Square and Museum of Memory at Punta de Rieles was first suggested in 2003 by social forces organised in the association Espacio Memorias para la Paz (Memorial Space for Peace). However, it was only launched in 2010, when Montevideo's former mayor Ricardo Ehrlich approved the move, and the Diputació Barcelona of Catalunya decided to fund the project, since it considered the locale of great value in the recovery of historical memory.⁶²

Complementing such initiatives, Tabaré Vázquez's government engaged actively in the construction of historical memory. In September 2005, the administration asked José Pedro Barrán, Gerardo Caetano and Alvaro Rico, three experts on Uruguayan history, to prepare, on the basis of all available public and private documents, a report on human rights violations during the dictatorship. This report, published in three volumes by the presidency in 2007, included detailed information on each of the desaparecidos on Uruguayan soil and available information on those responsible for their deaths.⁶³ Likewise, in late 2005, the Administración Nacional de Educación Pública (National Administration of Public Education, ANEP) asked Carlos Demasi, Alvaro Rico and Vania Markarian to update the curriculum of study

⁶¹ 'Museo de la memoria en Uruguay', 26 Nov. 2007, available at blog.yaaqui.com/el-museo-de-la-memoria-se-inaugura-en-montevideo_articulo_12_12585.html.

⁶² 'SERPAJ rechaza traslado de presos al ex penal de Punta de Rieles,' 3 April 2009, available at www.sociedaduruguaya.org/2009/04/serpaj-rechaza-traslado-de-presos-al-ex-penal-de-punta-de-rieles.html; 'Uruguay protesta por cárcel en Punta Rieles,' 4 April 2009, available from memoriasparalapaz@hotmail.com; 'Memoria en Punta de Rieles: un camino por recorrer', available at <http://callejerarevista.blogspot.com/2011/06/memoria-en-punta-de-rieles-un-camino.html>; Gelsi Ausserbauer, 'El barrio Punta de Rieles será un museo vivo de la memoria: vecinos y ex presas siguen pidiendo la cesión del viejo penal', *La República* (Montevideo), 30 June 2009, available at www.larepublica.com.uy/comunidad/370786-el-barrio-punta-de-rieles-sera-un-museo-vivo-de-la-memoria.

⁶³ José Pedro Barrán, Gerardo Caetano and Alvaro Rico (eds.), *Investigación histórica sobre detenidos desaparecidos* (Montevideo: IMPO, 2007). See also 'Entrevista a Álvaro Rico', available at <http://memoriaviva5.blogspot.com/2008/06/entrevista-alvaro-rico.html>.

of contemporary history in the second half of the twentieth century.⁶⁴ Some declarations by Demasi triggered a heated debate among political parties, the military and the general public about the responsibility of the different social and political forces for the violence and repression, thus indicating that the issue remains highly divisive.⁶⁵

A New Popular Vote and its Aftermath

As Uruguayan citizens participated in the presidential elections of 25 October 2009, they also voted in a plebiscite on whether the Law of Expiry should be repealed. Several steps led to this new attempt to annul the law 20 years after the 1989 referendum. In 2006, human rights lawyers, legislators and judges established a National Coordinating Council to Invalidate the Law of Expiry. In Montevideo in September 2007, the Council launched a high-profile campaign to collect the 251,847 signatures (representing 10 per cent of voters) necessary to present to the Electoral Court before 24 May 2009 in order to trigger a plebiscite. In February 2009, amid intense debate, the Congress, with a majority of MPs from the leftist Frente Amplio, gave a boost to the campaign by declaring that the law was unconstitutional. The National Party, in particular the Herrera faction led by former president Lacalle, accused the government of being anti-democratic for its decision to ignore the outcome of the 1989 referendum. With the support of popular artists and public cultural figures, the Council managed to collect more than 361,000 signatures. Days before the plebiscite, the Supreme Court also declared the Law of Expiry unconstitutional as applied in a specific case.⁶⁶ But the plebiscite produced the same result as the referendum two decades earlier, since the new proposal to annul the law won only 48 per cent support. While these figures revealed once more that Uruguayan society was still divided on the issue, the legal door did not remain shut for very long.

The new impetus was again transnational in origin, and it eventually pushed the ruling coalition of the Frente Amplio to abide by the demands of parts of its popular base and attempt a repeal of the Law of Expiry by means of a parliamentary bill that looked set to pass but ended in a bitter twist in

⁶⁴ The project led later on to the publication of Carlos Demasi, Aldo Marchesi, Vania Markarian, Álvaro Rico and Jaime Yaffé, *El régimen cívico-militar en Uruguay, 1973–1985* (Montevideo: EBO and Centro de Estudios Interdisciplinarios Uruguayos, 2009).

⁶⁵ Allier Montaño, *Batallas por la memoria*, pp. 266–71. For an analytical assessment of access to, and use of, archives for historical reconstruction, see Isabel Wschebor Pellegrino, 'Los documentos de archivo sobre la última dictadura uruguaya: quién accede y cómo', Seminario sobre el derecho de habeas data en Uruguay, 24 April 2008, available at www.claeh.org.uy/html/images/stories/docs/Ponencia_isabel_wschebor.pdf.

⁶⁶ Due to the civil law character of Uruguay's legal system, such a decision has no binding effect on future adjudication and did not nullify the general applicability of the Law of Expiry.

May 2011. The bill was a last-minute attempt by the coalition to avoid condemnation by the Inter-American Court of Human Rights. The pressure derived from a case filed by Juan Gelman and his granddaughter with the IACHR in 2006, after failed attempts by Uruguayan courts to force the state to investigate and find those responsible for the disappearance of Gelman's daughter-in-law, María Claudia Iruretagoyena de Gelman, who had been abducted in Argentina in 1976 and transferred to Uruguay, where she was murdered after giving birth. The Law of Expiry, claimed by the plaintiffs to be the main obstacle in the case, was alleged to be incompatible with the legal principles of the Inter-American system, which had been recognised and ratified by the Uruguayan state.⁶⁷ Requested to explain, the Uruguayan government made two arguments: that its legal standards cannot be applied retroactively, and that it had to respect the sovereignty of the decisions by the Uruguayan people who twice upheld the Law of Expiry in popular votes held according to the Uruguayan Constitution.

The IACHR considered that over the course of four years the Uruguayan government had been unable to supply satisfactory answers about the congruity of the Law of Expiry with the legal provisions of the Inter-American system, and so passed the case to the Inter-American Court of Human Rights. By November 2010 the Court had already condemned Brazil for its lack of progress in the investigation and legal prosecution of the Brazilian soldiers responsible for the extra-judicial execution and disappearance of 62 members of the Araguaia guerrilla, an armed Communist group, in 1972–4.⁶⁸ Foreseeing a similar condemnation, Uruguay's foreign minister, Luis Almagro, convinced the government and ruling coalition to propose a bill to effectively repeal the Law of Expiry through an interpretive law that would annul its main articles. The lower chamber of deputies approved the bill, with the support of 50 out of 80 representatives, in November 2010. The bill looked like it might stall in the Senate, due to the very slim majority of the Frente Amplio and the reluctance of three of its senators, among them Eleuterio Fernández Huidobro, to overturn the popular decisions by parliamentary vote.⁶⁹ After the Frente Amplio coalition decided in March 2011 to force its internal factions to abide by the decision of its plenary, a revised bill drafted by former Socialist senator José Korzeniak was approved

⁶⁷ See the testimony of Juan Gelman on his years of struggle and the attitudes of the various Uruguayan administrations, in *Página/12*, 25 Nov. 2010, available at http://notas.desaparecidos.org/2010/11/el_poeta_juan_gelman_habla_de.html.

⁶⁸ Raúl Olivera Alfaro, 'Sobre el futuro de la impunidad en Uruguay, también miremos hacia Brasil', available at <http://www.pvp.org.uy/?p=1749>. For the court ruling, see *Caso Gomes Lund y otros ('Guerrilha do Araguaia') vs. Brasil*, available at www.corteidh.or.cr/docs/casos/articulos/seriec_219_esp.pdf.

⁶⁹ See, among others, 'Impunidades y cuestiones legales', *Página/12*, 6 March 2011, available at www.pagina12.com.ar/diario/elmundo/4-163557-2011-03-06.html.

almost unanimously in the Senate. To become law, the bill had to return to the lower house for a final reading in May 2011, and a shock was in store as the Frente Amplio coalition failed to push the bill through in spite of its parliamentary majority. Prior to the vote, President Mujica changed course and while criticising the ‘cursed law’ issued a call to avoid bypassing the popular vote through a momentary legislative majority. Deputy Víctor Semproni, a former comrade-in-arms of Mujica in the Tupamaros movement, abstained from voting, leading to a tied vote that frustrated the legislative initiative.⁷⁰

The legislative fiasco resulted from the unexpected implications of the move initiated two months earlier. Almost inadvertently, President Mujica and the ruling coalition had entered a lose-lose situation. Approving the bill by a simple parliamentary majority would have implied disregarding the popular decisions that the Uruguayan people had twice taken on the Law of Expiry, in 1989 and 2009. Indeed, opinion polls showed clearly in April 2011 that over two-thirds of the country’s citizens opposed the approval of the interpretive law on these grounds.⁷¹ The Frente Amplio could not afford to be seen to be disregarding the outcome of public consultation, a banner it customarily raised in pursuit of important policy achievements, as when a majority of consulted voters declined to support privatisation initiatives in 1992 and 2003. For the parliamentarians, approving the legislative move in May 2011 implied also that the lower house members would have ignored the will of those voters who elected them to office on the same day that they upheld the Law of Expiry. Legally, the bill was also strongly criticised by constitutional experts. Politically, approving the bill would have undone unwritten understandings between the former Tupamaros and the military officers. Indeed, in 1998 the Tupamaros and a group of military officers, the Tenientes de Artigas, had drafted a joint declaration supporting the view that both sectors had been engaged in a state of war in the 1960s and 1970s and thus called on all sides to leave behind mutual grievances for the sake of providing closure. Although they failed to close the deal at the time, some of those officers made the text public in 2011 – they were disappointed with President Mujica’s initiative to annul the key articles of the Law of Expiry, as he had been one of the MLN-Tupamaros negotiators 13 years earlier.⁷² Failing to approve the interpretive law after initiating the legislative move was a clear sign of political fracture and

⁷⁰ ‘La Caducidad sigue en pie’, *El Observador* (Montevideo), 20 May 2011, available at www.observador.com.uy/noticia/202081/la-caducidad-sigue-en-pie/.

⁷¹ ‘La votación en el Senado sobre la Ley de Caducidad’, dialogue between Oscar A. Bottinelli and Fernando Vilar, Monte Carlo TV, 14 April 2011, available at www.factum.edu.uy/node/35.

⁷² ‘Texto del pacto inconcluso entre Tupamaros y militares en 1998’, *El Observador* (Montevideo), 25 April 2011, pp. 3–4.

lack of binding leadership within the ruling coalition, for which the Frente Amplio paid a political price. Almost immediately after 20 May, and in open disagreement with Vice-President Danilo Astori and the economic cabinet, President Mujica announced a state initiative to launch a controversial land tax. An immediate change of agenda was sorely needed. In late October 2011, the Frente Amplio managed to pass a law removing any statute of limitations for past human rights violations. This in effect overturns the Law of Expiry and has already prompted a flood of legal suits filed by individual victims of illegal detention and torture during the repression and by IELSUR, a human rights organisation. Nonetheless, polls indicated that a majority of the population did not approve of the move, while constitutional law experts and retired judges thought that its retroactive character could lead the Supreme Court to declare it unconstitutional. Observers also indicate that the legislative move may likely embolden the political opposition to reclaim the banner of republicanism from the Frente Amplio, given that its legislative moves have ignored the outcome of the 1989 and 2009 consultations.

Conclusions

The defeat of the legislative initiative in May 2011 was met with citizen approval and even with relief in various political, constitutionalist and social circles. Still, recent polls also show that over 60 per cent of sampled citizens support the idea that the president should lead administrative initiatives toward truth and justice. Thus, citizens expressed strong support for excavations in search of remains of the still-missing victims of repression, and for an individual review by the executive of some of the nearly 80 cases formerly dismissed under the terms of the Law of Expiry, in order to reconsider whether they should be forwarded to the judicial system for prosecution.⁷³ Contemporary Uruguayans seem to favour finding a middle ground to give solace to victims and attain accountability for past human rights violations without shattering the institutional mechanisms that popular consultation has maintained twice in recent decades.

Uruguay is not unique in its protracted and uneven confrontation with the past legacy of human rights violations. What seems remarkable in the decades-long process is the progressive and yet only partial unravelling of the negotiated pattern of transitional justice that enshrined impunity while sacralising national consensus. This article has analysed such intermittent progress

⁷³ According to a poll conducted by Factum (www.factum.edu.uy), supporters versus opponents of those two measures in May 2011 were 73 versus 20 per cent and 62 versus 29 per cent respectively. The review of cases by the executive is possible until November 2012 according to the nature of the crimes against humanity as interpreted by the Supreme Court of Uruguay.

towards historical truth and partial accountability. Indeed, much has changed in the last 25 years. Reparations and compensations were granted; the issue of the return of exiles was addressed; several missing children were located and some of them embraced their biological connection to the families of their parents forcibly disappeared during the dictatorship; human rights NGOs and associations of victims and relatives of victims pursued protest and put forward demands of truth and justice; civil lawsuits were opened against the state for its failure to protect citizens or provide full accounts of remains; an official commission of truth was established; spaces were claimed as sites of memory; and criminal trials were opened against some of the most notorious repressors and prominent civilian officials who held key state positions during the dictatorship. These openings can be attributed to the combined, mounting effect of several converging elements: the emergence of promoters of collective demands and memory, primarily relatives of victims, human rights organisations and intellectuals; the impact of revelations in neighbouring countries related to human rights violations perpetrated transnationally; the rising pressures of international bodies and transnational networks committed to the protection of human rights; and last but not least, the shifts of political forces acceding to power and progressively processing the demands of truth and accountability made time and again by various sectors of civil society and international organisations.

Nonetheless, until October 2011, the multiple attempts to annul the Law of Expiry had failed, showing a persistent division in society over the question of how to balance moral demands for accountability with the pragmatics of institutional stability. A majority continues to favour the maintenance of the basic framework of legal immunity, even if many support the adoption of alternative mechanisms to provide comfort and a sense of justice to victims. These findings lead to a paradoxical observation, rather unexpected from the perspective of previous studies of transitional justice. As the collective and public memory of the past becomes denser and some of the demands for truth and accountability find their way into the social and institutional agenda, it becomes more, not less, difficult to undo the framework of legal immunity. Military veterans of those years have clung to their interpretation of past repression as the expected correlate of revolutionary activism. Those visions seem to coexist with the newer understanding of human rights and demands for accountability. The public debate and the intense internal divisions and contradictory moves of the Frente Amplio in early 2011 show that, while there are tireless and vocal demands for truth and justice by some social and political actors, Uruguayan politicians and citizens at large remain divided and hesitant on how to deal with a still-contested past. The parliamentary decision in October 2011 to render ineffective the Law of Expiry will not put an end to Uruguay's ambivalence about who should have the last word on

interpretations of the authoritarian period – the political class, the constitutional court, the general populace, through referenda, or the victims and their representatives, through the courts. The story of Uruguay's long drawn-out reckoning with its past is likely to see many more chapters yet.

Spanish and Portuguese abstracts

Spanish abstract. Este artículo analiza el largo proceso por medio del cual el Uruguay democratizado ha enfrentado su legado de violaciones a los derechos humanos. Central a tal proceso ha sido la naturaleza de las políticas transicionales uruguayas y su más reciente transformación parcial. Debido a la transición negociada hacia la democracia, las élites políticas civiles enfocaron el dilema de la transición de equilibrar normatividad y contingencia política por medio de un marco de inmunidad legal. Por años, ello impidió la adopción de iniciativas judiciales en casos de violaciones a los derechos humanos o lanzar una comisión oficial de la verdad, al contrario de su vecina Argentina. Una serie de factores nacionales e internacionales (producto de los esfuerzos de diferentes fuerzas políticas y sociales) finalmente abrieron nuevos terrenos institucionales para avanzar en una tardía rendición de cuentas y confrontación con el legado de la represión autoritaria. A pesar de avances destacados, incluso en el terreno judicial, los intentos por desafiar a la impunidad legal fracasaron tres veces, ya fuera a través de consultas populares o, más recientemente, en un voto parlamentario. En cada caso, el gobierno proyectó oficialmente una narrativa que sacralizaba el consenso y la reconciliación nacional sustentados por el voto popular y la adopción de una perspectiva que pregonaba dejar el pasado atrás.

Spanish keywords: justicia transicional, violaciones a los derechos humanos, impunidad, rendición de cuentas, memoria histórica

Portuguese abstract. Analisa-se o processo pelo qual o Uruguai democratizado lidou com seu legado de violações dos direitos humanos. A natureza das políticas de transição uruguaias e sua resolução parcial mais recente são centrais a este processo. Devido à transição para a democracia eleitoral negociada, diferente do que sucedeu na vizinha Argentina, as elites políticas civis abordaram o dilema da transição (de equilibrar as expectativas normativas e as contingências políticas) promulgando a imunidade legal, por anos evitando iniciativas de iniciar julgamentos ou abrir uma comissão da verdade oficial. Uma constelação de fatores nacionais e transnacionais, que incluíram recorrentes iniciativas partindo de forças sociais e políticas, por fim possibilitaram novas bases institucionais para relatos de verdades tardios que levaram à responsabilização por algumas injustiças históricas. Contudo, tentativas de desafiar a impiedade legal total através da consulta popular fracassaram duas vezes e, mais recentemente, foram derrotadas por voto parlamentar. Em cada ocasião o governo oficialmente projetou um discurso que sacralizou o consenso e a reconciliação nacional, hoje consagrados por dois votos populares soberanos e a adoção de uma perspectiva democrática que não está presa no passado.

Portuguese keywords: justiça de transição, violações dos direitos humanos, impiedade, transparência e responsabilidade pessoal e institucional, memória histórica