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Uruguayan President José Mujica's Reversal on Impunity Disappoints Base

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Uruguayan President José Mujica's ambiguous positions on human rights and his unexpected decision to promote the participation of private capital in state enterprises carrying out basic infrastructure projects have perplexed and caused tension among progressive and leftist sectors that support the Frente Amplio (FA) government. Both issues—annulling the legislation guaranteeing impunity to military and police who committed crimes against humanity during the 1973-1985 civilian-military dictatorship and opposing privatization of state businesses or any activities inherent to them—are historic causes of those political and social sectors that, suddenly, saw themselves betrayed by Mujica.

In the first case, Mujica put all his power and prestige on the line to stop Congress from annulling the Ley de Caducidad de la Pretensión Punitiva del Estado, a pretentious legal name for what is popularly called the impunity law. In the second, the president promoted a public-private investment law (Ley de Asociación Público-Privada), which will allow national or foreign investors to participate in the construction of, among other things, hospitals, schools, prisons, roads, and even public sports venues.

Neither the parties involved nor analysts talk of a possible rupture in the governing coalition, but the climate within the administration in the past two weeks has undermined the unity that has characterized the FA since its creation in 1971.

The rightist opposition has celebrated in both cases and has even sarcastically sent Mujica and his administration a message, saying "welcome to the capitalist world."

Huge disappointment for human rights groups

The impunity law has been in effect since 1986, months after the end of the dictatorship, when the armed forces threatened to return to power and announced that they would not allow any of their members to be investigated by civilian justice. Since then, the FA, the trade-union central Plenario Intersindical de Trabajadores-Convención Nacional de Trabajadores (PIT-CNT), victims' relatives, and dozens of social organizations have backed two plebiscites to annul the law.

In both cases, although the voting was carried out under irregular conditions, the "no" vote on annulling the impunity law barely defeated the "yes" vote, the position of those unwilling to have murderers, torturers, or those responsible for disappearances continue moving freely through the streets without paying for their crimes (NotiSur, Nov. 6, 2009).

Since then, the Suprema Corte de Justicia (SCJ) has ruled on three occasions that the law is, for various reasons, unconstitutional. Most recently, on March 24, the Inter-American Court of Human Rights (IACHR) said that the law violated all international agreements and conventions signed by Uruguay (NotiSur, April 15, 2011) and told the government that it should "adapt its domestic law to that established by the American Convention on Human Rights" and "initiate an investigation of
the facts of the present case to determine corresponding criminal and administrative responsibilities and apply consequent sanctions."

The IACHR was referring to one of the most emblematic cases connected to Operación Condor—the coordinated repression among the Southern Cone dictatorships in the 1970s and 1980s: the kidnapping in Argentina and murder in Uruguay of the son and daughter-in-law of Argentine poet Juan Gelman and the subsequent adoption of the couple's newborn daughter.

In 2010, the lower house of the Uruguayan Congress approved a law that ended impunity and sent it to the Senate. On April 12, the Senate passed a version of the bill, amended (and improved) by a team of constitutional experts, whose leading defender was Sen. Lucía Topolansky, wife of the president. The bill was then returned to the lower house, where on May 19 it should have become law with the vote of the 50 FA deputies in the 99-member body. But one FA deputy defected and refused to vote; with the 49 opposition legislators for the first time in recent legislative history voting as a united bloc, the final count was 49-49, a tie that prevented the law's annulment. It opened a period within the FA and in Mujica's relationship with the left and progressives whose outcome is unpredictable.

What brought about this unexpected result? Although no one as yet understands it, four weeks after the Senate approved the measure and 11 days before the deputies were to definitively end impunity, Mujica wrote a letter to the legislators asking them not to vote for the bill that they had received from the Senate. He said that it had "constitutional flaws," that "there is no easy-to-understand barrage of arguments to explain why the FA will vote for that text," and he added that "to force the path" of annulment is equivalent to "forging a splendid sword for the opposition to decapitate us." He insisted that annulling the impunity law would cause such serious damage that it could jeopardize any possibility that Uruguayans would vote for the FA for a third period in 2014.

The president asked why impunity should end now, and he added that victims' relatives, militants, and FA legislators were acting out of hatred. "The human explanation that I give myself," he wrote, "is that the pain sown by the dictatorship with its procedures not only left the thirst for justice but also built an implacable hatred that blinds one to reason."

In previous days, Mujica had taken another surprising step by visiting in prison Gen. Miguel Dalmao, the only active-duty military to have served, since last November, a sentence for crimes against humanity.

Base reacts to "betrayal" by Mujica

The evening of May 20, as they have for 18 years, relatives of the murdered and disappeared carried out the yearly Marcha del Silencio. More than 100,000 people joined them in a demonstration that covered 11 blocks of Montevideo's main thoroughfare, the largest nonpolitical demonstration that anyone can remember in the post-dictatorship period in the city of 1.5 million. No slogans were shouted nor were partisan banners carried. This year, for the first time, neither Mujica nor the defector deputy took part. Along the march route and on city walls, graffiti was repeated that a week later had not been removed. It said "Mujica traitor."

A day after Mujica's letter to the legislators was made public, hundreds of militants and leaders using the slogan "Frenteamplistas against impunity" released an extensive open letter that continues receiving new signatures. It said, "Compañero José Mujica, president of the republic,
has maintained that the bill written by the FA and approved by the Senate puts at risk the victory that we all desire in 2014 and, with it, the strengthening of the process of change initiated when we took over the national government. During the process of writing that bill, many diverse objections and proposals were taken into consideration...If other ideas appear they will be considered with the utmost respect, but let us point out that it is not the time for improvisations in such an important matter. It is good that we try very hard to find the best solution possible, but we bear in mind that too much toing and froing can only cause confusion and discouragement."

In another section, the document takes aim against the law's supposed invulnerability for having been approved in a plebiscite. "They tell us and they will continue to tell us that the Ley de Caducidad was supported by a majority of the population and for that reason we must let it stand, that it has become invulnerable. It is an effective but false argument...The law is unconstitutional...it cannot be against the law to annul all its provisions, which were never legitimate."

Addressing the "splendid sword" to which Mujica referred, the Frenteamplistas said, "We disagree with that point of view. We do not accept that it is necessary to choose between continuity and the content of our plan of government. It would be a serious mistake, like choosing between freedom and security, between growth and distribution, between unity and diversity, between change and peace. If we convince ourselves that we must leave our identity behind, the electoral results won't matter. We will be defeated even if we win. Much is riding on our conduct in these days: respect for the memory of those no longer here and also care for the hope of those who are living. If we don't forget who we are, we can do it together."

The many well-known signatories include writer Eduardo Galeano, musician Daniel Viglietti, scientist Henry Engler, violinist Jorge Risi, María Elia Topolansky (the president's sister-in-law), retired military, various ex-ministers from the first FA administration, high-ranking union leaders, and former Deputy Guillermo Chifflet, president of the FA's discipline committee and surely the leading ethicist of the Uruguayan left.

The same day that the political right and the defecting FA deputy decided that impunity would stand, London-based Amnesty International (AI)—one of the many humanitarian and human rights organizations throughout the world that were waiting for the legislative results—released a document saying, "Uruguay has missed a historic opportunity in the pursuit of justice....Uruguay has a moral and legal obligation to provide justice to those who suffered from torture and other abuses—not to protect their torturers from investigation and trial."

"A chance to turn a very difficult page by removing a norm that in practice put those responsible for human rights violations above the legal system, in violation of the principle of equality before the law, has slipped through the hands of the Uruguayans," said Guadalupe Marengo, deputy director of AI's Americas program.

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