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Uruguay, Brazil Tackle Impunity Laws
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The same day that Uruguayan deputies passed a law restoring the "state's punitive power," which ensures that a statute of limitations will never again cover crimes against humanity committed during the 1973-1985 civilian-military dictatorship and that those who committed such crimes will be investigated and eventually punished, senators in Brazil voted to create a truth commission (Comissão da Verdade). It will allow the judiciary to investigate but not punish military and police who kidnapped, tortured, and murdered opponents of the 1964-1985 military regime.

In Brazil, what at first glance might be seen as an opening that would lead to finding the truth and administering justice is, however, rejected by relatives of victims of the de facto government and by human rights activists, who deride it as a "half-truth commission."

In Uruguay, different questions have arisen, because it is believed that the lawmakers' decision was made not for ethical reasons but rather to avoid sanctions from the Inter-American Court of Human Rights (IACHR). In recent months, both Uruguay and Brazil were condemned by the Organization of American States (OAS) body, which ordered that they make reparations for the damage done by the state during their respective dictatorships and do so by the end of 2011.

Brazil’s military still powerful

Brazil is the only South American country that endured a dictatorship during the last quarter of the 20th century in which the military were managing their withdrawal from power down to the smallest detail and from long before the definitive date on which they formally returned to their barracks. The political parties never interfered with their plans. Thus, in 1979, preparing for their future, they approved an amnesty law guaranteeing their impunity. When they turned the government over to civilians in 1985, the condition was clear: the amnesty law could not be changed (NotiSur, Sept. 29, 1995, and March 4, 2011).

In December 2010, at the end of the second term of former President Luiz Inácio Lula da Silva (2003-2011), the IACHR found the Brazilian state responsible for the kidnapping, murder, and forced disappearance of 61 guerrillas in Araguaia, in the north of the country (NotiSur, May 27, 2011).

Fifteen years earlier, in 1995, the Brazilian office of the Center for Justice and International Law (CEJIL) and Human Rights Watch/Americas (HRWA) had appeared before the IACHR calling for an investigation to determine what happened to those people on the banks of the Rio Araguaia. Beyond the moral condemnation, the 2010 ruling ordered Brazil to declare the law signed in 1979 by Gen. João Baptista de Figueiredo "without legal standing."

Since then, the military leadership has opposed any move against the amnesty law, such as the formation of the truth commission. In December 2010, the commanders of the three branches of the military and other high-ranking Army, Navy, and Air Force officers threatened Lula with mass resignations. Brazil is the only South American country that has emerged from a dictatorship where no military person has been detained or tried for human rights violations.
For the Senate to be able to pass the law setting up the truth commission, both the government and Congress had to make many concessions. In the end, little was left: 1) the commission will have only two years to investigate everything that occurred regarding human rights between 1948 and 1988; 2) it can investigate but not bring cases to the judiciary for action; 3) it will have just seven members and 14 aides to investigate the events of 40 years; 4) the commission cannot release data, information, names, or documents it obtains, and no final report of its findings will be produced, as occurred in Argentina; 5) the commission does not have its own budget.

The high degree of submission to military pressure was evident even regarding the time frame chosen for the commission’s work. When a senator asked why the commission would focus on 1948-1988 when the dictatorship was in power from 1964-1985, he was told simply that the military made the decision so that no one could think that they were being investigated.

"We are looking more at a half-truth commission than a truth commission; I don't know why we want an agency like this," said professor Cecilia Coimbra, director of the humanitarian group Tortura Nunca Mais.

"Wherever you look, the conclusion is always the same, and it is clear: my country seems to be very afraid of the truth, it doesn’t know how much truth it can tolerate. Actually, it prefers to ignore rather than to look at itself in the mirror of time," wrote Brazilian journalist Eric Nepomuceno in the Argentine daily Página 12.

"A culture of silence and impunity exists in Brazil, we still live in the shadow of the dictatorship," Dominican priest, writer, and former political prisoner Frei Betto said, as quoted by Agence France-Presse (AFP). The friar was referring to the government’s deference to the military and the incoherence of governing-coalition deputies, who, on Oct. 20, exactly one week before voting to create the truth commission, refused to allow a legislative working group to consider the possibility of excluding from the amnesty the crimes of torture and forced disappearance. Thus, they indirectly showed their support for the 1979 law continuing in effect and covering all crimes, including those two, the most aberrant.

**Uruguay finally removes impunity law**

Under strong military pressure, in 1986 the Uruguayan Congress passed the law formally called the Ley de caducidad de la capacidad punitiva del Estado and commonly known as the impunity law. It was a disguised amnesty that benefitted dictatorship-era human rights violators. Citizens tried to rescind it on two occasions—in 1989 and 2009. On both occasions, supporters obtained the signatures of at least 10% of the electorate required to call a plebiscite. Both times, the plebiscite was held but voters opted to keep the law.

In 1989, the vote took place under military threats. In 2009, the governing Frente Amplio (FA), which had a legislative majority, promised support that its top leaders—more concerned with winning national elections—did not provide (NotiSur, Jan. 23, 2009).

Finally, last March, the IACHR condemned the inaction of the Uruguayan administrations in clarifying the Gelman case, perhaps the succession of events that best exemplified Operación Condor, the coordinated repression of political opponents by the Southern Cone military regimes (NotiSur, April 15, 2011).
A young couple, María Claudia García Irureta Goyena and Marcelo Gelman (son of the poet Juan Gelman), were kidnapped in Buenos Aires. Marcelo was killed, and the pregnant María Claudia was taken on a clandestine flight to Montevideo, Uruguay, where she gave birth to a daughter. She was then killed, and her body has never been found. Her daughter, Macarena, was given to another couple. Two years ago, Macarena learned her real identity and was reunited with her biological family.

In its finding, besides demanding the repeal of the Ley de Caducidad, the IACHR ordered that the Uruguayan state facilitate the investigation of Gelman case, pay compensation to the Gelman family, and hold a "public act of reparation" accepting responsibility for what happened during the years of state terrorism. As in the Brazil ruling, the IACHR ordered that all points be carried out by the end of this year. The Uruguayan government paid the Gelmans reparations, the judiciary prosecuted five military and one police officer responsible for María Claudia García Irureta Goyena's murder, and everything is ready for a joint act by the executive, legislative, and judicial branches to do their mea culpas in a public act of reparation.

The only thing lacking was the most important: to remove the impunity law from the Uruguayan legal code. That was what the deputies did in the early morning hours on Oct. 27, when it passed law 18.831, a text with four brief articles. Basically, the law restores the state's punitive power regarding "all crimes committed in applying state terrorism before March 1, 1985" (the date the first post-dictatorship civilian government assumed office); it classifies those criminal acts as crimes against humanity; and, as a consequence, repeals the statute of limitations for anything that occurred between 1973 and 1985.

The opposition, defeated in both houses of Congress, said that law 18.831 is not valid because a law passed by the legislature does not supersede one approved in a referendum. The claim has no legal justification, but the rightist press continues repeating arguments such as those of Deputy Jorge Gandini of the Partido Blanco, who said, "I reject the paradox of [the IACHR] telling us from thousands of kilometers away what we have to do here."

The campaign against the law continues, even though Corte Suprema de Justicia (CSJ) president Leslie Van Rompaey stated clearly that "referendums do not have more weight than what takes place in a democratic institution," that is, they do not have a "higher value." He said that "human rights are not simply a good at the disposal of the majority precisely because human rights are rights of the minorities."

In contrast with Brazil, in Uruguay everyone celebrated the decision that will finally end the impunity that has benefitted kidnappers, torturers, and assassins.

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