Uruguay's Supreme Court Ignores International Human Rights Norms

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While Uruguayans marked the 40th anniversary of the June 27, 1973, civilian-military coup, and all cities in the country paid tribute to victims of the dictatorship, the Suprema Corte de Justicia (SCJ) received a new condemnation from the Inter-American Court of Human Rights (IACHR), various UN agencies, and world-renowned jurists such as Spain's Baltasar Garzón.

The SCJ does not recognize the primacy of international human rights treaties signed by Uruguay and, contrary to all global norms, gives national law precedence and considers that crimes such as kidnapping, torture, disappearance, and assassination are not crimes against humanity and are therefore subject to statutes of limitations like common crimes such as robbery.

Unlike Argentina, which maintains open cases against those accused of genocide, or European countries, which still pursue and try Nazi war criminals, Uruguay absolves such persons of all guilt after a certain number of years.

With the telling slogan "memory and justice," acts of remembrance were held in plazas and streets, in theaters and sports arenas, in Congress and schools during the week of June 27.

SCJ closes important human rights cases

However, in a very different vein, on the day before the 40th anniversary of the bloodiest coup in the country's history and on June 27 itself, the SCJ announced two decisions that make clear the real political and ideological position of four of the five SCJ justices. First, the court closed two cases in which high-ranking Army and Air Force officers were on trial for torture, forced disappearance, and murder. Second, it exonerated two soldiers responsible for the 1981 hanging death of a political prisoner.

The SCJ has been showing signs of moving in this direction since late 2012. In early 2013, by declaring unconstitutional a law passed by Congress that imposed a small tax on large landowners, the high court showed its willingness to make explicit its loyalty to certain powerful sectors of society.

In February 2011, in the Gelman case (NotiSur, April 15, 2011), the SCJ decision rejected the argument that the crime of disappearance is permanent and only ends with the appearance of the victim either alive or dead. In response, the IACHR informed the SCJ that its decisions must conform to provisions of international humanitarian treaties. The Gelman case is a paradigmatic example of Operation Condor, the coordinated repression by Southern Cone dictatorships during the 1960s, 1970s, and 1980s. The victim was Marcelo Gelman, son of Argentine poet Juan Gelman.

Now, the SCJ has issued similar rulings. Along with the IACHR, Pablo de Greiff, the UN special rapporteur on the promotion of truth, justice, reparation, and guarantees of nonrecurrence, his colleague Juan Méndez, special rapporteur on torture and other cruel, inhuman, or degrading
treatment or punishment, and Gabriela Knaul, special rapporteur on the independence of judges and lawyers were especially harsh on the SCJ.

"It is troubling that crimes committed during the dictatorship still go unpunished and that the paths of access to justice and compensation for victims and their relatives remain closed," said De Greiff. "Uruguay must keep in mind that it is obliged to remove any obstacle that favors impunity for those responsible for human rights violations," said Méndez. "As public officials, the judges have the obligation to ensure respect for and promotion of human rights and the rule of law," said Knaul.

**High court sides with large landowners**

In February, the SCJ had given the first indication of its alignment with the powerful when it ruled unconstitutional the rural property tax (Impuesto a la Concentración de Inmuebles Rurales, ICIR). The government-proposed law imposed a small tax on properties larger than 2,000 hectares, according to a scale that began at US$8 per ha for smaller parcels and US$17 for properties of more than 10,000 ha. The government sought to collect some US$60 million annually from the tax, the proceeds of which were to be used for upkeep on rural roads.

The CSJ received 127 appeals on grounds of unconstitutionality brought by large property owners. More than 100 were administered by former vice president Gonzalo Aguirre Ramírez, a high-ranking leader of the Partido Blanco (PB or Nacional), a member of one of the country's patrician families, a landowner, and the legal representative of the major landowners and multinational societies—Argentine-based El Tejar, Agronegocios del Plata, and Grobocupatel; US-based Timberland Group and Weyerhaeuser; Finland-based Stora Enso; and Chilean-based Arauco—with ties to soy and lumber businesses, two sectors benefitted by generous national legislation.

All political sectors understood that the SCJ decision was nothing more than a political stand in favor of the powerful and an attack on the process of change led by President José Mujica and the progressive Frente Amplio (FA). On the FA Web page, socialist Mónica Xavier, FA president, said that the court's ruling was "a decision made on behalf of those who don't need it." She said, "The decision protects big business, harming the country and its people, who will be deprived of public works that are necessary for their well-being and development," and added, "This SCJ pronouncement causes great injustice in a society that we want to transform so that there is more fairness and social justice."

With its June 26 and 27 decisions, the court made clear who its friends are in Uruguayan society and did so knowing that the world's highest legal bodies would unfortunately categorize the decision as being anti-justice. Just as the SCJ's ruling that the ICIR was unconstitutional had opened the way for its alignment with the powerful, on April 9, on an especially sensitive issue like human rights, SCJ president Jorge Ruibal Pino said that prosecutors or judges who want "the judiciary to take another path than the one that this court has indicated will find themselves facing an impassable wall."

When he unconditionally aligned himself with the kidnappers, torturers, and murderers, Ruibal Pino spoke in the name of four of the five SCJ magistrates, those who ignore international jurisprudence and were challenged in advance for "pre-judging cases" by the five most active prosecutors in the penal system.

The Montevideo daily La República wrote that the court "should not have been surprised when, on June 20, the IACHR gave it an ethics lesson" when it said that "in cases in which forced
disappearances and other serious violations have been proven, it is fundamental that states effectively investigate the facts, since the pressing need to prevent a repetition of the same violations depends, in good measure, on avoiding impunity and satisfying victims' and society's expectations to access knowledge of the truth of what happened.

In the two findings condemning Uruguay, the IACHR has specifically referred to the crime of forced disappearance. The most recent finding said that the imprescriptibility of that type of crime—something which its ruling show, the Uruguayan SCJ does not accept—is one of the only ways that international society has to not let the most atrocious crimes committed in the past go unpunished, which offends the conscience of all humanity and are transmitted from one generation to the next.

The IACHR explained that the "forced disappearance of a person begins at the time of the abduction and extends for the whole period of time that the crime is not complete, that is to say, until the state acknowledges the detention or releases information pertaining to the fate or whereabouts of the individual."

It also added that, even though Uruguayan jurisprudence did not define forced disappearance as a crime until 2006, "given the involvement of a crime of a permanent nature, namely, that the crime is prolonged in time, when the codification of enforced disappearance enters into force, the new law applies, without this implying a retroactive application." To head off any future excuse, the IACHR reminded the SCJ magistrates that states that are party to the American Convention on Human Rights may not invoke constitutional law or other aspects of domestic law to justify a failure to fulfill or enforce the obligations contained in the treaty.

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