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Applauding Uruguay's Quest for Justice: Dictatorship, Amnesty, and Repeal of Uruguay Law No. 15.848.

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APPLAUDING URUGUAY'S QUEST FOR JUSTICE: DICTATORSHIP, AMNESTY, AND REPEAL OF URUGUAY LAW NO. 15.848.

INTRODUCTION AND BACKGROUND

A. *Dictatorship in Uruguay 1973–1985*

Uruguay has been an independent state since 1828, and constitutionally governed since 1830.¹ In 1967, the state adopted a new constitution (1967 Constitution).² However, the protections guaranteed by the 1967 Constitution began to erode only a year later, on June 13, 1968, as the government instituted Prompt Security Measures (MPS) in an effort to curb the growing social unrest that resulted from recent economic instability.³

In March 1972, Juan Maria Bordaberry won the election for the Colorado Party, setting the stage for the implementation of a dictatorship in subsequent years.⁴ Bordaberry immediately pushed for the implementation of the Law on State Security and Public Order (State

1. BUREAU OF WESTERN HEMISPHERE AFFAIRS, U.S. DEP'T OF STATE, BACKGROUND NOTE: URUGUAY, (Jun. 23, 2011), available at <http://www.state.gov/outofdate/bgn/uruguay/187431.htm> [hereinafter Background Note: Uruguay]. Independence was codified in the Treaty of Montevideo in 1828, and was the result of a three-year struggle for independence from Brazil. *Id.*

2. Background Note: Uruguay, *supra* note 1. The Constitution established that:
The inhabitants of the Republic have the right to be secure in their enjoyment of life, honor, liberty, safety, work and property. No one may be deprived of these rights except in accordance with the laws that are established for reasons of the public interest.
CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA ORIENTAL DEL URUGUAY DE 1967 [C.P.], § 2, art. 7 (Uru.), available at <http://pdba.georgetown.edu/Constitutions/Uruguay/uruguay67.html>, (last visited Jan. 14, 2013) [hereinafter 1967 Constitution]. Translation by author. The 1967 Constitution also strengthened the system of checks and balances in Uruguay. *Id.*

3. SERVICIO PAZ Y JUSTICIA [SERVICE FOR PEACE AND JUSTICE], URUGUAY NUNCA MAS: HUMAN RIGHTS VIOLATIONS 1972–1985 6 (Elizabeth Hampsten trans., 1989). In addition to authorizing the ignorance of civil liberties, the MPS also allowed the executive branch of the Uruguayan government to “name administrators of state institutions, suspend student and teacher activities, ‘militarize’ public and private businesses, suspend the activities of banking and financial institutions, control credit for agriculture, and administer rent control.” *Id.* at 9. Uruguay’s GDP per capita was a mere \$581.26 in 1967 (as compared to \$4152.02 in the United States at the same time). *Uruguay and United States GDP Comparison*, WORLD BANK, http://www.google.com/publicdata/explore?ds=d5bncppjof8f9_&met_y=ny_gdp_pcap_cd&idim=country:URY&dl=en&hl=en&q=uruguay+gdp+per+capita+chart#ctype=l&strail=false&bcs=d&nselm=h&met_y=ny_gdp_pcap_cd&scale_y=lin&ind_y=false&rdim=country&idim=country:URY:USA&ifdim=country&hl=en&dl=en (last updated Sept. 8, 2013). And this was an improvement following the economic recession in the late 1950s. Luis Bértola, *Uruguay’s Early History: An Overview of the Economic History of Uruguay Since the 1870s*, ECONOMIC HISTORY SERIES ENCYCLOPEDIA (Feb. 2, 2010, 12:08), <http://eh.net/encyclopedia/article/bertola.uruguay.final>.

4. SERVICIO PAZ Y JUSTICIA, *supra* note 3, at 27.

Security Law), which was designed to supplement the existing MPS and allow the government greater control over subversive forces in Uruguay.⁵

By 1973, the military had taken full control,⁶ establishing a “civilian-military regime,” characterized by widespread human rights abuses.⁷ While the human rights abuses took many forms,⁸ perhaps the most egregious were the state-sanctioned “disappearances,”⁹ which official estimates put in the hundreds.¹⁰ The abuses went well beyond disappearances, but the extent of the abuses in Uruguay at that time was largely unknown, since the military regime so closely shielded any intrastate activities from the eyes of the outside world.¹¹

Following the return to full elections after the “civilian-military regime,” Julio Maria Sanguinetti took office in 1985.¹² A few of his first orders of business were to release all political prisoners¹³ and create two commissions to investigate the human rights abuses during the dictatorship.¹⁴ The first of these commissions was known as the Commission for the Investigation of the Situation of the Disappeared and Related Events (Commission for the Disappeared) and the second was the Investigating Commission on the Kidnapping and Assassination of the National Representatives Zelmar Michelini and Hector Gutierrez Ruiz (Investigative Commission on Kidnapping).¹⁵ Unfortunately, these two

5. *Id.* at 27, 31–32. The State Security Law was passed by the Uruguayan legislature, despite findings that it was unconstitutional. *Id.* at 31–32. Moreover, the Senate Constitution and Legislation Commission (Senate Commission) convened to examine the constitutionality of the law, and found that the law was likely unconstitutional. *Id.* at 31. The Senate Commission’s findings resulted in the legislature temporarily suspending their consideration of the law, but the legislature eventually voted the law through in response to threats of a military takeover. *Id.* at 32.

6. Bordaberry officially dissolved the legislature in June 1973, and the dissolution of the Civil Service followed soon after. *Id.* at 37. However, the power of the judiciary to combat any actions of the executive was taken away before that with the passage of the State Security Law, and human rights abuses in Uruguay began before June 1973. *Id.*

7. Background Note: Uruguay, *supra* note 1.

8. See generally SERVICIO PAZ Y JUSTICIA, *supra* note 3, at 61–230 (discussing arrests, torture, military justice, extended imprisonments, poor care in prison facilities, murders, and forced disappearances).

9. For a longer general discussion on the forced disappearances, see *id.* at 214–30. The disappearances included both adults and children, at least one child as young as twenty days old. *Id.* at 225.

10. Paula Lopez-Gamundi, *Uruguay: A Bitter Lesson in Forgiving*, COUNCIL ON HEMISPHERIC AFF. (Jun. 7, 2011), <http://www.coha.org/uruguay-a-bitter-lesson-in-forgiving/>.

11. *Truth Commission: Uruguay*, U.S. INST. OF PEACE, <http://www.usip.org/publications/truth-commission-uruguay> (last visited Jan. 20, 2013).

12. *Uruguay—History*, ENCYCLOPEDIA OF THE NATIONS, <http://www.nationsencyclopedia.com/Americas/Uruguay-HISTORY.html#b> (last visited Jan. 20, 2013).

13. *Id.*

14. *Truth Commission: Uruguay*, *supra* note 11.

15. *Id.* The Commission for the Disappeared contained lists of the disappeared, as well as the

commissions were short-lived, and received no official response from the government.¹⁶

B. Uruguay's 1986 Expiry Law

In 1986, in an effort to leave the past behind, the Uruguayan legislature passed Uruguay's Expiry Law, granting amnesty to many military and police officers for human rights violations committed during the dictatorship.¹⁷ The Expiry Law, Law No. 15.848, purports to recognize the termination of the "exercise of the punitive aim of the state relating to crimes committed before March 1, 1985 for military and political actions"¹⁸ While the Expiry Law contains sixteen Articles, the most important are Articles 3 and 4. Article 3 requires the judicial branch to consult with the executive before opening any cases related to dictatorship-era human rights violations.¹⁹ While some believe that Article 4 tempered the law by allowing the executive to override the default of non-prosecution in certain situations and allow for investigations,²⁰ others believe that Article 4 only leads to selective exceptions to the general prohibition on investigation and can only hurt the search for truth and justice.²¹

locations of the disappearances. Many disappeared outside of Uruguay, in Argentina, Chile, or Paraguay, making evident the coordinated efforts of the governments to keep their constituents in submission. SERVICIO PAZ Y JUSTICIA, *supra* note 3, at 343–47.

16. *Truth Commission: Uruguay*, *supra* note 11.

17. Ley de Caducidad de la Pretensión Punitiva del Estado, Ley No. 15.848 [Expiry Law], Publicada D.O. 28 diciembre 1986, No. 22295, (Dec. 22, 1986), <http://www.parlamento.gub.uy/leyes/ AccesoTextoLey.asp?Ley=15848&Anchor=> [hereinafter Expiry Law].

18. *Id.* Translated from "Se reconoce que ha caducado el ejercicio de la pretensión punitiva del estado respecto de los delitos cometidos hasta el 1º de marzo de 1985." Translation by author.

19. *Id.* Article 3 indicates that "[f]or the purposes specified in the preceding articles, a judge presiding over any of the denounced complaints, will be required to inform the executive power, within 30 days of receiving the complaint, whether the researched complaint is covered in Article 1 of this Act." *Id.*, art. 3. Translation by author. Article 3 further indicates that "If, the executive thus informs, the judge will arrange the closure and filing with previous claims. If, on the other hand, there is no reply or the executive informs that the act is not covered, the judge shall arrange to continue the investigation." *Id.* Translation by author.

20. Article 4 provides that "Without prejudice to what is disallowed in the preceding articles, the judge of the case may choose to send testimony of the reports to the Executive. . . [and if it chooses to] the executive power will order an immediate investigation with the intention of clearing up [possible violations]." *Id.*, art. 4. Translation by author.

21. See *Uruguay's Expiry Law Silences Democracy*, GLOBALIZATION 101 (Aug. 8, 2011), <http://www.globalization101.org/uruguay-s-expiry-law-silences-democracy-2/> (in support of the proposition that the Expiry Law was a political tool, designed to cover up the abuses of the Colorado Party, and thus would inevitably lead to inequitable enforcement perpetuation of political inequality).

C. Referendums

In a political move that appears to be unprecedented, Uruguay has twice put the Expiry Law to a referendum, and both times the Uruguayan people have voted to keep the Expiry Law, despite its safe harbor for human rights violators.²² Votes in favor of the Expiry Law did not prevail by a wide margin in either case, but the two referendums, held twenty years apart in 1989 and 2009 (1989 Referendum and 2009 Referendum, respectively), are indicative of a widespread sentiment in Uruguay that the majority wants to move forward and focus on continuing to build a sustainable democracy.²³

D. Judicial Response to the Expiry Law in Uruguay and Internationally

The Uruguayan Supreme Court and the Inter-American Court of Human Rights (IACHR) have held the Expiry Law to be unconstitutional. Only days before the 2009 Referendum, the Uruguayan Supreme Court held the Expiry Law unconstitutional.²⁴ Following the decision, lawyers for human rights abuse victim Nibia Salsagaray²⁵ remarked that “it’s understood that this sets a precedent and that the Supreme Court won’t change if presented with a similar case.”²⁶ Because the declaration of unconstitutionality in this case was only as-applied, the holding did not

22. Reuters, *Uruguay to Open to Rights Cases of Dictator Era*, N.Y. TIMES, July 1, 2011, at A6, available at <http://www.nytimes.com/2011/07/01/world/americas/01uruguay.html> [hereinafter *Uruguay to Open Rights Cases*]. There are indications, however, that the Colorado Party, coupled with the military, scared the public into believing that there would be consequences if the law were repealed. See generally JOHN HIGLEY AND RICHARD GUNTHER, *ELITES AND DEMOCRATIC CONSOLIDATION IN LATIN AMERICA AND SOUTHERN EUROPE* 178–208 (1992).

23. The 1989 Referendum showed 57% in favor of keeping the law, and 43% in favor of repealing the law. Elana Rissy and Juan Andres Elhordoy, *Ley de Caducidad, Dos Décadas Después la Discusión se Renueva* [*Expiry Law, Two Decades Later, the Discussion is Renewed*], EL ESPECTADOR [THE SPECTATOR] (Feb. 25, 2009), http://www.espectador.com/1v4_contenido.php?m=&id=144926&ipag=2. The 2009 Referendum produced similar results, with 53% in favor of keeping the law, and 47% in favor of repealing the law. Ekaterina Sivolobova, *Uruguay: Approaches to the Expiry Law*, JURIST: LEGAL NEWS AND RESEARCH (June 10, 2010), <http://jurist.org/dataline/2010/06/uruguay-approaches-to-the-expiry-law.php>. There are indications, though, that the Uruguayan media’s failure to publicize the 2009 Referendum led to a decreased voter turnout, and the vote was not necessarily indicative of the population. *Id.* For a geographic breakdown of the 2009 Referendum in Uruguay’s major cities, see *Uruguay: Amnesty Law Referendum 2009*, ELECTORAL GEOGRAPHY, <http://www.electoralgeography.com/new/en/countries/u/uruguay/uruguay-amnesty-law-referendum-2009.html> (last visited Jan. 20, 2013).

24. *Uruguay Dirty War Amnesty Illegal*, BBC NEWS (Oct. 20, 2009, 11:26), <http://news.bbc.co.uk/2/hi/americas/8316000.stm>.

25. *Id.* Nibia Salsagaray was a Communist who died while in military custody during the dictatorial regime. *Id.*

26. *Id.*

effectively annul the law.²⁷ However, Prosecutor Mirtha Guianze, who was instrumental in bringing the Salsagaray case to the Supreme Court, remarked that “[i]f the law is annulled [in the referendum], there won’t be any sense in ruling that it’s unconstitutional, but if the referendum doesn’t get enough votes, there is the possibility of making this argument in other cases.”²⁸

The Uruguayan Supreme Court repeated its declaration of unconstitutionality in 2010, allowing the opening of an investigation into Bordaberry’s role in twenty deaths during his regime, and ruling unanimously that the Expiry Law was unconstitutional as-applied to Bordaberry in this case.²⁹

The IACHR has also held Uruguay’s Expiry Law unconstitutional.³⁰ The ruling was decided in the case of Maria Claudia Garcia Iruretagoyena Gelman, who was disappeared in the 1970s.³¹ The IACHR held specifically that the actions taken with respect to Gelman were in violation of the American Convention on Human Rights, and declared the Expiry Law incompatible with Uruguay’s obligations under the American Convention on Human Rights.³²

27. *Id.* (“The Supreme Court’s ruling came in the case of Nibia Salsagaray . . . [who] died 35 years ago in a military barracks.”). *Id.*

28. *Id.*

29. *Uruguay Annual Report 2011*, AMNESTY INT’L, <http://www.amnesty.org/en/region/uruguay/report-2011> (last visited Jan. 20, 2013). The purpose of allowing the case to proceed, though, was largely symbolic, as Bordaberry was already serving concurrent thirty-year sentences for constitutional violations and extrajudicial killings performed during his regime. *Uruguayan Amnesty Law Unconstitutional*, AMERICAS QUARTERLY (Nov. 3, 2010), <http://www.americasquarterly.org/node/1974>.

30. *Gelman v. Uruguay, Merits and Reparations, Judgment*, Inter-Am. Ct. H.R. (ser. C), No. 221 (Feb. 24, 2011). In *Gelman v. Uruguay*, the IACHR held Uruguay responsible for the disappearance of Maria Claudia Garcia Iruretagoyena de Gelman. *Id.*; Press Release, Amnesty International, *Uruguay Must Investigate and Prosecute Crimes of the Past* (Sept. 26, 2011) (available at <http://www.amnesty.org/en/for-media/press-releases/uruguay-must-investigate-and-prosecute-crimes-past-2011-09-26>). The American Convention on Human Rights was signed at the Inter-American Specialized Conference on Human Rights in San Jose, Costa Rica, in November of 1969, and is designed to create and implement “a system of personal liberty and social justice based on the essential rights of man.” Organization of American States, American Convention on Human Rights, pmbl., Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123, available at http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.pdf. There were nineteen original signatories to the Convention, but only ten that recognize the authority of the IACHR. *American Convention on Human Rights: Members Chart*, INTER-AM. COMM’N ON HUMAN RIGHTS, <http://www.cidh.org/Basicos/English/Basic4.Amer.Conv.Ratif.htm> (last visited Jan. 20, 2013). Uruguay is among those ten countries, and thus is subject to jurisdiction of the IACHR. *Id.* Although signing in 1969 in San Jose, Uruguay did not ratify the Convention nor recognize the authority of the IACHR until April 1985, following the fall of the dictatorship. *Id.*

31. *Inter-American Court of Human Rights Says Uruguay Must Investigate and Punish Dictatorship Crimes*, CTR. FOR JUSTICE AND INT’L LAW (Mar. 23, 2011), <http://cejil.org/node/2138>.

32. *Id.* Though the IACHR chose to invalidate the law based on the American Convention on

E. Recent Developments

In the midst of the most recent referenda and judicial decisions, Uruguay also elected a new president in 2009, Jose Mujica.³³ Mujica publicly supported the repeal of the Expiry Law at the beginning of his presidency,³⁴ but shortly thereafter changed his position, asking that Uruguayans not “transfer the frustrations of our generation to the new generations,”³⁵ and instead look only to the future.³⁶

Despite Mujica’s recommendation to let the Expiry Law stand, a new law was drafted in 2010 that would supersede and effectively repeal the Expiry Law, and this law received preliminary approval from the Chamber of Deputies in Uruguay in 2010.³⁷ Several months later, in April 2011, the

Human Rights, the law has also been challenged under the Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/RES/217(III) (Dec. 10, 1948) [hereinafter UDHR], the International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Treaty Doc. No. 95-20, 999 U.N.T.S. 17, 6 I.L.M. 368 (1967), [hereinafter ICCPR], and the Inter-American Convention to Prevent and Punish Torture, Dec. 9, 1985, O.A.S.T.S. No. 67 (1985) [hereinafter IACPPT]. Mariana Rodriguez-Pareja and Salvador Herencia Carrasco, *Uruguay: Expiry Law Revoked*, RADIO NETHERLANDS WORLDWIDE (Nov. 21, 2011), <http://www.rnw.nl/international-justice/article/uruguay-expiry-law-revoked>. The UDHR and the ICCPR were adopted by the United Nations and apply to Uruguay, which is a United Nations member. *United Nations Members*, UNITED NATIONS, <http://www.un.org/en/members/> (last visited Jan. 20, 2013). The IACPPT was adopted by the Organization of American States (OAS), and Uruguay assented to the treaty in 1992. *Signatories and Ratifications: Multilateral Treaties: Inter-American Convention to Prevent and Punish Torture*, DEP’T OF INT’L LAW: ORG. OF AM. STATES, <http://www.oas.org/juridico/english/sigs/a-51.html> (last visited Jan. 20, 2013).

33. *Uruguay: Country Profile*, BBC NEWS (Dec. 23, 2011), http://news.bbc.co.uk/2/hi/americas/country_profiles/1229360.stm. Mujica was elected in 2009, and took office in 2010. *Id.* He was imprisoned during the dictatorship, and his election for the Broad Front leftist party alarmed many conservatives in Uruguay. *Id.* However, Mujica has publicly gone on record saying that he has no vengeance against those that imprisoned him during the dictatorship. *Id.*

34. *Uruguay President Mujica Approval Rating Plunges 29 Points in 15 Months*, MERCOPRESS (June 17, 2011), <http://en.mercopress.com/2011/06/17/uruguay-president-mujica-approval-rating-plunges-29-points-in-15-months> [hereinafter *Approval Rating Plunges*].

35. *Uruguay Congress Upholds Military Rule Amnesty Law*, BBC NEWS (May 20, 2011), <http://www.bbc.co.uk/news/world-latin-america-13480101>.

36. *Major Setback for President Mujica and for Uruguayan Ruling Coalition*, MERCOPRESS (May 16, 2011), <http://en.mercopress.com/2011/05/16/major-setback-for-president-mujica-and-for-the-uruguayan-ruling-coalition> [hereinafter *Major Setback*]. Mujica has warned of the “political dangers” of repealing the law, and has also suggested that it could be an unconstitutional deprivation of the rights of citizens to repeal the law, given the outcomes of the 1989 Referendum and 2009 Referendum. *Uruguay Congress Upholds Military Rule Amnesty Law*, *supra* note 35. Mujica’s viewpoint, however, is far from universal; even in his own party, as fellow Broad Front party member Felipe Michelini explained, “the truth remains kidnapped [as long as the Expiry Law still stands].” *Id.*

Political analysts attribute Mujica’s decline in approval ratings from 75% at the time of his election to a dismal 44% as of June 2011 in large part to disapproval over his stance related to the Expiry Law. *Approval Rating Plunges*, *supra* note 34.

37. Rachel Getzels, *Uruguay: Deputies Sanction Rulings that Invalidate Amnesty Law*, ARGENTINA INDEPENDENT (Oct. 21, 2010), <http://www.argentinaindependent.com/currentaffairs/news>

law passed the Uruguayan Chamber of Senators with minor modifications.³⁸ Due to the modifications, however, the bill had to return to the Chamber of Deputies.³⁹ In 2009, Jose Mujica's Broad Front Party held the majority (50 seats) in the Chamber of Deputies.⁴⁰ Had the voting progressed strictly along party lines, with the Broad Front Party voting for the annulment of the Expiry Law, the Expiry Law would have been annulled by a 50–49 vote. However, just before the vote, Broad Front member Victor Semproni left the debate, and refused to vote.⁴¹ As a result, while the entire remaining Broad Front Party voted to annul the Expiry Law, the rest of the Chamber of Deputies voted against it, and the result was a 49–49 deadlock that left the Expiry Law still intact.⁴²

Despite his fluctuating position toward the Expiry Law, Mujica has done his part to curtail its effect. In late June 2011, following the failure to annul the Expiry Law, Mujica authorized the Judiciary to reopen as many as eighty human rights cases pursuant to Article 4 of the Expiry Law.⁴³

roundups/roundupslatinamerica/uruguay-deputies-sanction-rulings-that-invalidate-the-amnesty-law-/. The Uruguayan legislature is bicameral, and divided into ninety-nine seats in the Chamber of Deputies (also known as the Chamber of Representatives), and thirty seats in the Chamber of Senators. *CIA World Factbook: Uruguay*, CENT. INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/geos/uy.html> (last visited Jan. 20, 2013). Of the eighty Deputies present at the vote sanctioning the invalidation of the Expiry Law, fifty voted to invalidate the law. Getzels, *supra* note 37. The potential annulment of the Expiry Law generated a great deal of attention from citizens, including strikers and protestors. *Id.*

38. *Uruguay Senate Votes to Annul Amnesty Law for Crimes During Dictatorship*, LATIN AMERICA NEWS DISPATCH (Apr. 13, 2011), <http://latindispatch.com/2011/04/13/uruguay-senate-votes-to-annul-amnesty-law-for-crimes-during-dictatorship/> [hereinafter *Uruguay Senate Votes to Annul Amnesty Law*]. The vote passed 16-15 in the Senate. *Id.* While there are only officially thirty votes in the Senate, the vice president sits with the senate, for a total of thirty-one votes. *Uruguay 2009*, ELECTIONS, REFERENDUMS AND ELECTORAL SOCIOLOGY AROUND THE WORLD (Oct. 28, 2009), <http://welections.wordpress.com/2009/10/28/uruguay-2009/> [hereinafter *Uruguay 2009*].

39. *Uruguay Senate Votes to Annul Amnesty Law*, *supra* note 38.

40. *Uruguay 2009*, *supra* note 38.

41. *Uruguayan Congress Fails to Gain a Majority to Annul Amnesty Law*, LATIN AMERICAN DISPATCH (May 20, 2011), <http://latindispatch.com/2011/05/20/uruguayan-congress-fails-to-gain-a-majority-to-annul-amnesty-law/>. Semproni claimed that he believed the proposal would not solve the problems of the Expiry Law, and that there were better ways to fix “this stain” on Uruguay’s past. *Id.*

42. *Id.*

43. *Uruguay to Open Rights Cases*, *supra* note 22. Mujica authorized the reopening of the cases despite his comment that “only time and death of all of us involved at the time will heal definitively these wounds.” *Uruguay: Overturning Amnesty Law Could Cost Ruling Coalition ‘Dearly,’* MERCOPRESS (May 3, 2011), <http://en.mercopress.com/2011/05/03/uruguay-overturning-amnesty-law-could-cost-ruling-coalition-dearly/> [hereinafter *Could Cost Ruling Coalition*]. The move was met with a great deal of resistance from retired military officers, and the status of the Expiry Law has been a source of Mujica’s slipping approval ratings. *Uruguay to Open Rights Cases*, *supra* note 22. The decision to reopen cases came on the heels of another Uruguayan Supreme Court decision classifying crimes committed during the dictatorship as serious “common crimes,” or “*delitos comunes*,” rather than crimes against humanity. The difference lies in the statute of limitations. *Corte Ratiñca que Delitos No Son Considerados de Lesa Humanidad* [Court Rules that Crimes are Not Considered Crimes Against

Uruguay then stood at a crossroads. The legislature had refused to comply with national and international judicial interpretations of the Expiry Law, and had instead sided with a slim majority of Uruguayan citizens who voted to keep the Expiry Law. The legislature had made the implicit determination to ignore the cries for answers and justice and instead move forward, relying on a likely unconstitutional law.

All this changed in late October 2011. Just when it seemed that the legislative failure to repeal the law in April and May of 2011 meant the death of any opportunity to confront the crimes of the dictatorship era head on, the Chamber of Senators and Chamber of Deputies, following a “long and intense debate,”⁴⁴ passed a law repealing the Expiry Law.⁴⁵ The Expiry Repeal Law, No. 18.831,⁴⁶ expressly repealed the current law,⁴⁷ eliminated the possibility of any procedural defaults that would bar prosecution,⁴⁸ and legislatively reclassified crimes during the dictatorship as crimes against humanity, effectively eliminating any statute of limitations that would bar the prosecutions.⁴⁹ The law also has two major

Humanity], EL PAIS [THE COUNTRY] (Mar. 31, 2011), <http://www.elpais.com.uy/110531/pnacio-569957/nacional/corte-ratifica-que-delitos-no-son-considerados-de-lesa-humanidad/> [hereinafter *Corte Ratifica*]. Whereas a crime against humanity has no statute of limitations, a serious common crime must be prosecuted within twenty-six years and eight months after the crime took place. *Id.* As a result, as of June 2011, the final date to submit an appeal for investigation of a crime committed during the dictatorship was November 1, 2011. *Id.*

44. *Uruguay Overturns Amnesty For Military-Era Crimes*, BBC NEWS (Oct. 27, 2011), <http://www.bbc.co.uk/news/world-latin-america-15486770> [hereinafter *Uruguay Overturns Amnesty*].

45. *Uruguay Revokes ‘Dirty War’ Amnesty*, GLOBAL POST (Oct. 27, 2011), <http://mobile.globalpost.com/dispatch/news/regions/americas/111027/uruguay-revokes-dirty-war-amnesty>. The vote was along party lines, as all fifty members of the Broad Front Party voted for the annulment. *Id.*

46. Rodríguez-Pareja and Herencia Carrasco, *supra* note 32.

47. Ley de la Pretensión Punitiva del Estado, Ley No. 18.831 [Expiry Repeal Law], Publicada D.O. 1º noviembre 2011, No. 28340, (Oct. 19, 2011), available at <http://www.parlamento.gub.uy/leyes/ AccesoTextoLey.asp?Ley=18831&Anchor=>. Article 1 “[r]eestablishes the full exercise of the punitive aims of the state for those crimes committed in implementation of state terrorism, until March 1, 1985, as comprehended in Article 1 of Law 15.858 [Expiry Law] . . .” *Translated from* “Artículo 1º - Se restablece el pleno ejercicio de la pretensión punitiva del Estado para los delitos cometidos en aplicación del terrorismo de Estado hasta el 1º de marzo de 1985, comprendidos en el artículo 1º de la Ley Nº 15.848, de 22 de diciembre de 1986.” *Id.* Translation by author.

48. *Id.* Article 2 states that “[T]here will not be calculated any procedural term, prescription or expiration, in the period between December 1986 and the validity of this law, for those crimes referred to in Article 1 of this law.” *Translated from* “Artículo 2º.- No se computará plazo alguno, procesal, de prescripción o de caducidad, en el período comprendido entre el 22 de diciembre de 1986 y la vigencia de esta ley, para los delitos a que refiere el artículo 1º de esta ley.” *Id.*, art. 2. Translation by author.

49. *Id.* Article 3 “[d]eclares that the crimes referred to in the proceeding articles, are crimes against humanity in accordance with international treaties to which the Republic [of Uruguay] is a party.” *Translated from* “Artículo 3º.- Declárase que, los delitos a que refieren los artículos anteriores, son crímenes de lesa humanidad de conformidad con los tratados internacionales de los que la República es parte.” *Id.* art. 3. Translation by author. The late October reclassification of the crimes as crimes against humanity came just in time; had the crimes not been reclassified before November 1,

implicit consequences: First, the Uruguayan judiciary now has full autonomy over what cases to open, no longer requiring the approval of the executive branch. Second, prosecution of human rights violations will now be devoid of the constraints of the political process and the unelected judiciary is now free to focus solely on the execution of justice.⁵⁰

HUMAN RIGHTS ABUSES AND JUDICIAL AND LEGISLATIVE RESPONSES THROUGHOUT LATIN AMERICA

The state of affairs in Uruguay, while fascinating and paradoxical, is not entirely dissimilar to neighboring South American countries, many of which were ruled by dictatorships during the twentieth century.⁵¹ Former dictatorships have confronted the aftermath of their respective regimes in a number of different ways, but the approaches of other Latin American countries can provide some guidance when evaluating the wisdom and consequences of recent events in Uruguay, leading to the inevitable conclusion that, for a variety of reasons, Uruguay's recent actions are an important step toward truth that should serve as an example to those countries yet to take these steps to right the wrongs of the past.⁵²

A. Human Rights Abuses

Latin America in the latter part of the twentieth century was a hotbed for human rights abuses. Arguably, no country has suffered from abuses more widespread than Argentina and Chile. Argentina's "prolonged state of virtual Civil War"⁵³ began with a military coup in 1976.⁵⁴ The 1976–

many victims may have lost their opportunity to report crimes and bring prosecutions, since the statute of limitations was set to expire November 1, 2011. *Corte Ratifica*, *supra* note 43.

50. Rodríguez-Pareja and Herencia Carrasco, *supra* note 32.

51. *See generally* RONALD M. SCHNEIDER, *LATIN AMERICAN POLITICAL HISTORY: PATTERNS AND PERSONALITIES* (2007); RONALD M. SCHNEIDER, *COMPARATIVE LATIN AMERICAN POLITICS* (2010); JAMES D. COCKROFT, *LATIN AMERICA: HISTORY, POLITICS, AND U.S. POLICY*, (1996); JOHN CHALRES CHASTEEN, *BORN IN BLOOD AND FIRE: A CONCISE HISTORY OF LATIN AMERICA* (2011); WILLIAM F. SATER, *SOUTHERN CONE NATIONS OF LATIN AMERICA* (1984).

52. What follows in this Note is not a broad overview of oppression and dictatorships in Latin America. Instead, countries included in this Note are only countries that have histories of dictatorships and have passed amnesty laws relating to the crimes against humanity during the dictatorship.

53. SCHNEIDER, *LATIN AMERICAN POLITICAL HISTORY*, *supra* note 51, at 312.

54. *Id.* The coup removed Isabel Perón from power. *Id.* Her husband Juan Domingo Perón was first elected in 1946, with the backing of the labor forces. *Perón Deposed in Argentina*, HISTORY, <http://www.history.com/this-day-in-history/peron-deposed-in-argentina> (last visited Jan. 20, 2013) [hereinafter *Perón Deposed*]. Perón served a full term, and was then elected again in 1952. *Id.* Although Perón was reelected in 1952, he was unable to hold onto public support, due to his repressive tactics. DAVID WILLIAM FOSTER, MELISSA FITCH LOCKHART, AND DARRELL B. LOCKHART, *CULTURE*

1983 military regime was characterized by a number of human rights abuses, including “disappearances,” which some estimate to affect as many as 14,000 people.⁵⁵

Chile’s human rights history is mostly the history of Augusto Pinochet’s reign of terror, which began in 1973 when he led a military coup that ousted and murdered Chilean president Salvador Allende, along with many others.⁵⁶ Pinochet’s reign was one of the worst in the hemisphere with respect to human rights violations. Within the first three months of Pinochet’s reign, 45,000 people were detained for questioning regarding their subversive role against the state, and 1,500 were already dead.⁵⁷ According to official reports, during Pinochet’s reign, at least 3,200 people were murdered, and nearly 30,000 more were tortured.⁵⁸

Brazil also fell victim to human rights abuses during a dictatorship lasting from 1964–1985⁵⁹ and brought on by political unrest following the election of Joao Goulart in 1960.⁶⁰ The military ousted Goulart in 1964.⁶¹ While the human rights violations in Brazil were not originally thought to be as egregious as those in neighboring countries, documents were uncovered that forced the Brazilian government to confront the full extent of the crimes.⁶²

Peru, though democratic during the 1980s, took a decidedly authoritarian path under elected president Alberto Fujimori in the 1990s in

AND CUSTOMS OF LATIN AMERICA AND THE CARIBBEAN: CULTURE AND CUSTOMS OF ARGENTINA 62 (1998). Perón was forced into exile in 1955, *Perón Deposed*, *supra*. Returning from exile, Perón was re-elected in 1973 before dying in office in 1974, leaving his wife, Isabel Perón, in charge. *Id.*

55. *Argentina, Amnesty Laws Struck Down*, HUMAN RIGHTS WATCH, (Jun. 14, 2005), <http://www.hrw.org/news/2005/06/14/argentina-amnesty-laws-struck-down>.

56. SCHNEIDER, *LATIN AMERICAN POLITICAL HISTORY*, *supra* note 51, at 357–58.

57. See Edward C. Snyder, *The Dirty Legal War: Human Rights and the Rule of Law in Chile 1973–1995*, 2 *TULSA J. COMP. & INT’L L.* 253, 260 (1995).

58. Larry Rother, *Chile’s Leader Attacks Amnesty Law*, N.Y. TIMES (Dec. 24, 2006), <http://www.nytimes.com/2006/12/24/world/americas/24chile.html>.

59. Larry Rother, *Crimes of Brazil’s Dictatorship Resurface*, N.Y. TIMES (Jan. 31, 2005), <http://www.nytimes.com/2005/01/30/world/americas/30iht-brazil.html>.

60. ROBERT M. LEVINE, *THE HISTORY OF BRAZIL* 123–24 (1999).

61. *Id.* at 126. Goulart inherited an unstable economy, and the press and labor unions refused to let him implement the reforms necessary to permanently stabilize the economy. *Id.* at 124. This in turn pitted the military against Goulart, and led to a military coup in 1964. *Id.* at 124–26.

62. Rother, *supra* note 58. Although the Brazilian government claimed that any documentation evidencing human rights abuses had been destroyed in the 1980s, the recent unearthing of documents hidden for two decades proved otherwise. *Id.* Some say that despite Brazil’s low number of state-sanctioned disappearances and deaths relative to its neighbors, it was actually the birthplace for concepts like “disappeared,” and provided a blueprint for an oppressive authoritarian state. *Id.*

an effort to stabilize the country.⁶³ The results were catastrophic and resulted in genocide and torture.⁶⁴

B. *Amnesty Laws*

Each of these regimes tried to insulate itself from prosecution and accountability. In 1983, Argentina elected president Dr. Raúl Alfonsín, who oversaw the reimplementation of democracy.⁶⁵ Alfonsín created the National Commission on the Disappearance of Persons (Commission on Disappearance), which was created to “investigate the fates of the thousands who disappeared during the [military] rule.”⁶⁶ The Commission

63. *CIA World Factbook: Peru*, CENT. INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/geos/pe.html> (last visited Jan. 20, 2013).

64. Estimates put the total dead and disappeared in Peru between 1980 and 2000 at roughly 69,280 people. *Peru*, INT'L CENTER FOR TRANSNAT'L JUSTICE, <http://ictj.org/our-work/regions-and-countries/peru> (last visited Jan. 20, 2013). The International Center for Transnational Justice explains:

The violent insurgencies of the Shining Path (Sendero Luminoso) affected vast tracts of the Peruvian countryside. In 1984, the Revolutionary Movement Túpac Amaru (Movimiento Revolucionario Túpac Amaru, or MRTA) initiated its own armed struggle against the government. Both groups committed abuses against civilians. The Peruvian state also unleashed systemic abuses, acting under a 1981 Emergency Law. Small, rural communities and native peoples of the Andes and Amazon bore the brunt of the violence and lived under a reign of terror and torture. In the next decade, President Alberto Fujimori's repressive rule further eroded the rule of law and gave rise to amnesty laws and impunity for government death squads. In 2000, he fled the country and a transitional government opened the door to truth and justice for two decades of mass human rights violations.

Id. A 2003 Truth and Reconciliation Commission found that the government and Fujimori were directly responsible for many of the human rights abuses. PERU HUMAN RIGHTS VIOLATIONS: FINAL REPORT, PERU TRUTH AND RECONCILIATION COMM'N (Aug. 28, 2003), <http://www.cverdad.org.pe/ingles/ifinal/conclusiones.php>. The Truth and Reconciliation Commission explained:

[B]eginning in 1992 the new counter-subversive strategy [of Fujimori's administration, following the 1992 coup that led to Authoritarian Rule] emphasized the selective elimination of political-administrative organizations or subversive groups. A death squad linked to Vladimiro Montesinos called “Colina” was responsible for assassinations, forced disappearances and cruel and ferocious massacres. The TRC has reasonable grounds to affirm that President Alberto Fujimori, his adviser Vladimiro Montesinos, and high level officials of the National Intelligence Service are criminally responsible for the assassinations, forced disappearances and massacres perpetrated by the “Colina” death squad.

Id. For a more detailed account of some of the specific instances of human rights violations in Peru, including firsthand accounts of murder, rape, and torture as reported by Peruvian officers and American correspondents, see Tamara Feinstein, ed., *The Search for Truth: The Declassified Record on Human Rights Abuses in Peru*, NAT'L SEC. ARCHIVE (Aug. 28, 2003), <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB96/index2.htm>.

65. *Nunca Mas [Never Again]*, NAT'L COMM'N ON THE DISAPPEARANCE OF PERSONS (1983), http://www.desaparecidos.org/nuncamas/web/english/library/neveragain/neveragain_000.htm (last visited Jan. 20, 2012).

66. *Id.* The Commission on Disappearance included reports on individual abductions, torture, secret detention centers, deaths, testimony from those in the government, and testimony from those who were once labeled as “disappeared,” as well as documentation of the secret detention centers. *Id.*

on Disappearance created great promise that Argentina would confront its past head on, but in 1986–1987, Alfonsín pushed Law No. 23,492 and Law No. 23,521 through Congress, effectively granting amnesty to most members of the military for their crimes against humanity during the dictatorship.⁶⁷ Similar steps were taken in Chile. Early in Pinochet’s reign, Chile passed an amnesty law that shielded anyone involved with the military from prosecution from murder or torture charges.⁶⁸ Brazil and Peru were no exception. Brazil passed Law No. 6683 toward the end of the dictatorship in 1979, granting amnesty for crimes committed by the military or members of the government in the name of politics.⁶⁹ Peru passed amnesty laws in 1994–1995 exempting military personnel from prosecution for human rights violations during the relevant time period.⁷⁰

C. Judicial Responses Internationally and Locally

In three of these four countries,⁷¹ the IACHR has explicitly declared the amnesty laws incompatible with the American Convention on Human

at Table of Contents. The report attempted to establish the whereabouts of the “disappeared” during the time that they were missing, and did so largely through the testimony of freed prisoners and eyewitnesses who were also tortured and detained. *See, e.g., Id.* at Part 1: The Repression, (chronicling the disappearance of Dr. Rafael Andrés Perrotta, director-owner of *El Cronista Comercial*, a newspaper with views contrary to those of the dictatorship). In the Commission on Disappearance’s own words, despite the dictatorship’s claims that the human rights violations were handled internally, “the report shows [that] murder, rape, torture, extortion, looting and other serious crimes went unpunished, as long as they were carried out within the framework of the political and ideological persecution unleashed during the years 1976 to 1982.” *Id.* at General Introduction.

67. Human Rights Watch, *supra* note 54. Law No. 24,492 “set a 60-day deadline for the initiation of any prosecution,” and Law No. 23,521 “grant[ed] automatic immunity from prosecution to all members of the military except top commanders.” *Id.*

68. Rother, *supra* note 57. The preamble to Decree Law No. 2191 explains that the purpose of the law was to “. . . to strengthen the ties that bind Chile as a nation, leaving behind hatred that has no meaning today, and fostering all measures that consolidate reunification of all Chileans.” Law No. 2191, April 18, 1978, DIARIO OFICIAL [D.O.] (Chile) [Chilean Amnesty Law], available at http://www.archivochile.com/Poder_Dominante/pod_publico/parl/PDparlamento0005.pdf. Translated by author.

69. Lei No. 6.683, de 28 de Agosto de 1979, DIÁRIO OFICIAL DA UNIÃO [D.O.U.] de 28.8.1979 (Braz.) [Brazil Amnesty Law], available at https://www.planalto.gov.br/ccivil_03/leis/l6683.htm.

70. *Fujimori: Amnesty Law for Human Rights Violators Intended to Bring Stability*, PERUVIAN TIMES (Dec. 17, 2007), <http://www.peruviantimes.com/19/fujimori-laws-were-intended-to-bring-stability/66/>. Fujimori claims that the Peruvian amnesty laws were designed to bring stabilization to Peru. *Id.* He stated, “I considered it necessary to look for a peaceful solution after 14 or 15 years of internal war . . . [t]hey were part of a general plan by the government to lead Peru to Peace.” *Id.* The laws provided for the prosecution of human rights violators only in a military court and for the protection of all other military officers who had committed human rights violations during the regime. *Id.*

71. The exception is Argentina, as Argentina explicitly repealed its laws before any case was brought to the IACHR challenging the laws. *See infra* note 72; *infra* note 73.

Rights.⁷² Several of these countries have also responded internally to the impediments to justice, both judicially and congressionally, providing citizens with a sense of relief, and reaffirming the commitment toward truth and justice.

Argentina's amnesty laws stood for more than a decade, but in 2001, the first rulings began to come from the lower Argentine courts, holding the laws to be unconstitutional.⁷³ The Argentine Congress formally recognized these non-binding declarations of the amnesty law's unconstitutionality in 2003, when the laws were officially annulled.⁷⁴ Two

72. In *Barrios Altos v. Peru*, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 75 (Mar. 14, 2001), the IACHR held Amnesty Laws 26479 and 26492 to be outside the limits of what is permissible under international law. The case stemmed from a 1991 incident when:

[S]ix heavily-armed individuals burst into the building located at No. 840 Jiron Huanta in the neighborhood known as Barrios Altos in Lima. When this irruption occurred, a "pollada" that was being held that is a party to collect funds in order to repair the building The [armed men] . . . covered their faces with balaclava masks and obliged the alleged victims to lie on the floor. Once they were on the floor, the assailants fired at them indiscriminately for about two minutes, killing 15 people and seriously injuring another four

Barrios Altos, ¶ 2(a)-(b). The court held specifically that Peru's amnesty laws violated Articles 4 (the right to life), 5 (right to humane treatment), and 8 and 25 (fair trial provisions) of the American Convention on Human Rights, and that the amnesty laws were "incompatible with the American Convention on Human Rights and, consequently, lack legal effect." *Barrios Altos*, ¶¶ 51(2)-(4). The IACHR also ordered that Peru investigate and prosecute human rights violations. *Id.* ¶ 51(5).

In *Almonacid-Arellano v. Chile*, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 154 (Sept. 26, 2006), the IACHR ruled unanimously that Chile had not met its obligations as laid out in the American Convention on Human Rights and that, "[i]nsofar as it was intended to grant amnesty to those responsible for crimes against humanity, Decree Law No. 2191 is incompatible with the American Convention and, therefore, it has no legal effects." *Almonacid-Arellano*, ¶ 171(2)-(3). The IACHR further held that Chile must "ensure that Decree Law No. 2191 does not continue to hinder the investigation, prosecution, and if applicable, punishment of those responsible for [similar extra legal executions] in Chile" *Id.* ¶ 171(6). Despite the invalidation by the IACHR, the law still stands today.

In *Lund v. Brazil*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 219 (Nov. 24, 2010), the IACHR held that Brazil's amnesty law violated the American Convention on Human Rights, and was thus incompatible with Brazil's international obligations. Peter Kornbluh and Erin Maskell, *Inter-American Human Rights Court Holds Brazil Accountable for Human Rights Crimes*, NAT'L SEC. ARCHIVE (Dec. 15, 2010), <http://nsarchive.wordpress.com/2010/12/15/inter-american-human-rights-court-holds-brazil-accountable-for-human-rights-crimes/>. The IACHR found that Brazil had committed violations of rights to life, liberty, and personal integrity in an effort to oppress any opposition to the state. *Id.* The IACHR further ordered:

[Brazil] . . . must carry out all efforts to determine the whereabouts of the disappeared persons, . . . provide the medical and psychological treatment as required by the victims, . . . carry out a public act of acknowledgement of its international responsibility, . . . adopt, in a reasonable period of time, the necessary measures to codify the crime of enforced disappearance

Lund, ¶ 325(10), (11), (13), (14).

73. *Argentina: Amnesty Laws Struck Down*, HUMAN RIGHTS WATCH (June 14, 2005), <http://www.hrw.org/news/2005/06/14/argentina-amnesty-laws-struck-down>.

74. Tribune News Services, *Argentine Mothers Rejoice at Repeal of Amnesty Laws*, CHI. TRIB. (Aug. 22, 2003), http://articles.chicagotribune.com/2003-08-22/news/0308220288_1_human-rights-

years later in June 2005, the Supreme Court of Argentina officially declared the law unconstitutional, setting a binding precedent and foreclosing the possibility of any analogous law existing in Argentina as long as democracy remained intact.⁷⁵

Peru took a similar step in 2001, expressly repealing its laws in order to comply with the IACHR's ruling.⁷⁶ For Peru, the saga did not end there. In 2010, the Peruvian Congress passed Legislative Decree 1097.⁷⁷ Legislative Decree 1097 set a backdated limit on human rights prosecutions, limiting any prosecutions to human rights crimes that occurred during or after November 2003.⁷⁸ Perhaps in response to criticism, and perhaps on the volition of his own conscience, President Alan García sent a bill to

amnesty-laws-military-officers. Mothers of many of the disappeared were quoted as saying the repeal was necessary in their "quest for justice." *Id.*

75. *Argentina: Amnesty Laws Struck Down*, *supra* note 73. The repeal of the amnesty law opened the door for the prosecution of former military officials, and in April 2010, Reynaldo Bignone, the last Argentine dictator, was sentenced to twenty-five years in prison for his role in the oppression, kidnapping, and torture of individuals during the dictatorship. Associated Press, *Argentina's Last Dictator Gets 25-Year Prison Sentence*, GUARDIAN (Apr. 24, 2010), <http://www.guardian.co.uk/world/2010/apr/21/argentina-dictator-reynaldo-bignone-prison> [hereinafter *Argentina's Last Dictator*]. Bignone was not the only one sentenced, but he was the most prominent, as six other military officials were given prison sentences that ranged from seventeen to twenty-five years. Charles Newberry & Alexei Barrionuevo, *25 Years for Leader of Argentine Dictatorship*, N.Y. TIMES, Apr. 20, 2010, at A8, available at <http://www.nytimes.com/2010/04/21/world/americas/21argentina.html>. Family members of the disappeared watched as the verdict was read and Estela de Carlotto, president of the human rights group, Grandmothers of the Plaza de Mayo, remarked that "[t]oday is a good day for Argentines . . . [w]e are in agreement [with the ruling], but a lot remains to be done. There are hundreds more accused." *Argentina's Last Dictator*, *supra*. As of June 2010, two more trials were opened, with 31 defendants in total. *Former Argentine Dictator to Go to Trial in Rights Abuse Case*, CNN (June 30, 2010), http://articles.cnn.com/2010-06-30/world/argentina.human.rights.trials_1_dirty-war-human-rights-abuses-trial?_s=PM:WORLD.

76. *Peru: Attacks on Justice*, INT'L COMM'N OF JURISTS (Aug. 27, 2002), <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2002/08/Peru-attacks-on-justice-2002-publications-2002.pdf>. The repeal of the law was followed by the creation of a Truth Commission. *Id.*

77. Decreto Legislativo 1076, 31 de agosto de 2010, EL PERUANO, DIARIO OFICIAL 424816 1 de septiembre de 2010 (Peru). *Executive Decrees Raise Concern of "Amnesty" for Human Rights Crimes, and Criminalization of Social Protests*, PERUVIAN TIMES (Sept. 6, 2010), <http://www.peruviantimes.com/06/executive-decrees-raise-concern-of-amnesty-for-human-rights-crimes-and-criminalization-of-social-protests/7966/> [hereinafter *Executive Decrees Raise Concern*].

78. *Id.* The law also provides relief for those that have suffered from exceedingly long investigations. Press Release, Inter-Am. Comm'n on Human Rights, IACHR Expresses Concern Over Decree 1097 in Peru, (Sept. 9, 2010) (Press Release No. 91/10) (available at <http://www.cidh.org/Comunicados/English/2010/91-10eng.htm>) [hereinafter Press Release No. 91/10]. Legislative Decree 1097 was met with opposition and concern from inside Peru. *Executive Decrees Raise Concern*, *supra* note 76. However, the concern over the new law did not stop there. The IACHR expressed concern over Legislative Decree 1097, worried that "this decree could lead to impunity in hundreds of cases involving serious human rights violations that occurred during the armed conflict that Peru experienced in the 1980s and the 1990s—especially since civil society . . . ha[s] suggested repeatedly that the executive branch has kept these trials from moving forward." Press Release No. 91/10, *supra*.

Congress in September 2010 to repeal Legislative Decree 1097.⁷⁹ One day after the request was sent to Congress, Legislative Decree 1097 was officially repealed and the barrier to prosecution was removed.⁸⁰

Although Chile officially stripped Pinochet of his immunity from trial in 2000,⁸¹ the country has never actually repealed its amnesty law.⁸² As a result, despite the IACHR's ruling that Chile's amnesty law is incompatible with the American Convention on Human Rights⁸³ the law still stands today.

In 2005, following the discovery of evidence that revealed the true extent of the crimes against humanity committed in Brazil, President Luiz

79. *Executive Sends to Congress Bill to Repeal Decree 1097 Following Vargas Llosa Resignation from Memory Museum*, PERUVIAN TIMES (Sept. 13, 2010), <http://www.peruviantimes.com/13/executive-sends-to-congress-bill-to-repeal-decree-1097-following-vargas-llosa-resignation-from-memory-museum/8093/>. The proposal came in part from protests by former president of the commission of the Memory Museum (in honor of those who died during Peru's internal struggle 1980-1995), Mario Vargas Llosa, before his resignation in protest of the law. *Id.*

80. *Update: Peru's Congress Votes to Overturn Decree 1097*, PERUVIAN TIMES (Sep. 14, 2010), <http://www.peruviantimes.com/14/update-perus-congress-votes-to-overturn-decree-1097/8118/>. The decision to repeal came from a debate that lasted only three hours, in which Congress voted 90-1 to repeal. *Id.*

81. Though Pinochet was stripped of his immunity, he never actually stood trial. *Chile Drops Pinochet Trial*, BBC NEWS (Jul. 1, 2002), <http://news.bbc.co.uk/2/hi/americas/2080500.stm>. Pinochet was originally arrested in London in 2002 on a warrant from Spain, charging him with human rights violations during his reign. *Pinochet Arrested in London*, BBC NEWS (Oct. 17, 1998), <http://news.bbc.co.uk/2/hi/europe/195413.stm>. The Law Lords, the highest court in the United Kingdom, then twice ruled that despite his status as a former head of state, he was not immune from prosecution. *Pinochet Faces Extradition Battle*, BBC NEWS (Nov. 25, 1998), http://news.bbc.co.uk/2/hi/uk_news/221718.stm. In October of 2000, the Law Lords ordered Pinochet's extradition to Spain for trial. *Way Cleared for Pinochet Extradition*, BBC NEWS (Oct. 8, 1999), http://news.bbc.co.uk/2/hi/uk_news/468589.stm. However, growing concerns over Pinochet's health following his third stroke, *Pinochet Offered Medical Tests*, BBC NEWS (Nov. 5, 1999), http://news.bbc.co.uk/2/hi/uk_news/506588.stm, the Law Lords held in March 2000 that he was not fit for trial, and Pinochet returned to Chile. *Pinochet Set Free*, BBC NEWS (Mar. 2, 2000), http://news.bbc.co.uk/2/hi/uk_news/663170.stm. Following his return to Chile, Pinochet was stripped of his immunity, *Spain Hails Pinochet Decision*, BBC NEWS (June 6, 2000), <http://news.bbc.co.uk/2/hi/americas/778353.stm>, a move that was supported by Chilean President Ricardo Lagos, *Chile President Backs Pinochet Verdict*, BBC NEWS (Aug. 9, 2000), <http://news.bbc.co.uk/2/hi/americas/871134.stm>, and formal charges were brought against Pinochet on December 1, 2000, *Pinochet Charged with Kidnapping*, BBC NEWS (Dec. 1, 2000), <http://news.bbc.co.uk/2/hi/americas/1050374.stm>. However, following a trial that lasted roughly eighteen months, the case was dismissed on the grounds that Pinochet was mentally unfit to stand trial. *Chile Drops Pinochet Trial*, BBC NEWS (July 1, 2002), <http://news.bbc.co.uk/2/hi/americas/2080500.stm>. See also generally, ARIEL DORFMAN, EXORCISING TERROR: THE INCREDIBLE UNENDING TRIAL OF AUGUSTO PINOCHET (2002); NAOMI ROHT-ARRIAZA, THE PINOCHET EFFECT: TRANSNATIONAL JUSTICE IN THE AGE OF HUMAN RIGHTS (2002).

82. See Latin American Amnesty Laws Annulled; The Struggle Against Impunity Continues, PEACE PALACE LIBRARY (Jan. 27, 2011), <http://peacepalacelibrary-weekly.blogspot.com/2011/01/latin-american-amnesty-laws-annulled.html> (explaining that Chilean amnesty laws have not been formerly annulled) [hereinafter Latin American Amnesty Laws Annulled].

83. See *Almonacid-Arellano*, ¶ 171(2)-(3).

Inacio Lula DaSilva was slow to react.⁸⁴ However, legal pressure may be forcing the hand of the current Brazilian government. In early 2010, the Brazilian Supreme Court declared that the Brazilian amnesty law shielded torturers from prosecution.⁸⁵ On the heels of the Brazilian Supreme Court's declaration of impropriety, and the 2010 IACHR ruling of incompatibility with the American Convention on Human Rights,⁸⁶ current Brazilian President Dilma Rousseff has supported a probe into the human rights violations that took place during the dictatorship.⁸⁷ Despite this act of good faith, many believe that any probe into crimes committed during the dictatorship will be ineffective without an official repeal or annulment of the law, either legislatively or judicially, since without such a repeal or annulment, the worst offenders will still not be held accountable for their actions.⁸⁸

ANALYSIS

As the vote to repeal the Uruguayan Expiry Law was announced, hundreds of citizens stood and applauded as they watched the proceedings unfold from their bird's eye view in the halls above the Capitol Building.⁸⁹ The repeal was a historic event for Uruguay, and, for a multitude of reasons, one that will be looked upon favorably for generations to come.

The repeal of the law will provide—and has already started to provide—citizens with a sense of justice and relief. Uruguay's dictatorship ended in 1986.⁹⁰ A quarter of a century later, many of the Uruguayan citizens who suffered through the atrocities are still alive and in search of justice.⁹¹ When other Latin American countries have repealed or curtailed their amnesty laws for crimes against humanity committed during dictatorships, the responses from the people have been overwhelmingly positive.⁹² Speaking loudly to avoid being drowned out by the celebration

84. Stuart Grudgings, *Brazil Urged to Prosecute Abuses from Dictatorship*, REUTERS, Dec. 14, 2010, available at <http://www.reuters.com/article/2010/12/15/us-brazil-dictatorship-idUSTRE6BE09D20101215> (stating that as of 2010, Brazil had not sentenced anyone for crimes committed during the 1964–1985 dictatorship).

85. *Id.*

86. *Lund v. Brazil*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 219 (Nov. 24, 2010).

87. *Amnesty Law Limits Brazilian Soul Searching*, BRUNEI TIMES (Sept. 8, 2011), <http://www.bt.com.bn/features/2011/09/08/amnesty-law-limits-brazilian-soul-searching>.

88. *Id.*

89. *Uruguay Overturns Amnesty*, *supra* note 44.

90. *Uruguay—History*, *supra* note 12.

91. Lopez-Gamundi, *supra* note 10.

92. *See, e.g., Argentina: Amnesty Laws Struck Down*, *supra* note 73; Tribune News Services,

that followed the passage of the law, Luis Puig, a member of the Broad Front Party remarked:

This is an historic night. Our people have been fighting impunity for twenty-five years. It is an homage to all those who resisted the dictatorship, their mothers and relatives, and all those who for many years kept on fighting when the state stood against the claims for truth and justice.⁹³

By the same token, not only do the victims deserve redress, the perpetrators of the crimes must be held accountable for their actions. Refusing to prosecute human rights violations, even with the noble intent of forgetting the past and moving toward the future, implicitly condones the actions of human rights violators during the dictatorship.⁹⁴ President Mujica has publicly taken the stance that in order for Uruguay to move forward into the future, the human rights abuses must be left in the past, and the country must be allowed to heal through time rather than through the prosecution of twenty-five year-old crimes.⁹⁵ However, this stance is far from universal⁹⁶ and is insufficient to trump the need to provide redress to victims and punish those responsible for Uruguay's past atrocities.

Moreover, maintaining Uruguay's Expiry Law would inevitably have led to continued selective enforcement and inequitable application of the law.⁹⁷ As discussed above, Article 4 of Uruguay's Expiry Law allows the executive to open human rights cases even when they fall within the exceptions of the Expiry Law.⁹⁸ At first glance, there seems to be a tenable argument that the Expiry Law does not offend the application of justice, but this is not the case. By placing all control in the hands of the executive, the drafters of the Expiry Law left all discretionary enforcement in the hands of those susceptible to political winds. This would likely have led to

supra note 74; *Argentina's Last Dictator*, *supra* note 75; Newberry & Barrionuevo, *supra* note 75; *Peru: Attacks on Justice*, *supra* note 76.

93. *Uruguay Overturns Amnesty*, *supra* note 44.

94. William W. Burke-White, *Reframing Impunity: Applying Liberal International Law Theory to an Analysis of Amnesty Legislation*, 42 HARV. INT'L L.J. 467, 467 (2001). Burke indicates that several dictators have allowed for a peaceful transition to democracy in exchange for their amnesty. *Id.* However, Burke-White indicates that amnesty rests on three fundamental problems:

First, it is often enacted by self-serving dictators. Second, it may conflict with the subject state's domestic law or constitution. Third, it often violates a state's international obligations to prosecute certain crimes and to provide citizens with specific rights of redress.

Id. As discussed above, all three of these problems apply to Uruguay's unique situation.

95. *Could Cost Ruling Coalition*, *supra* note 43.

96. *Uruguay Congress Upholds Military Rule Amnesty Law*, *supra* note 35.

97. *See Uruguay's Expiry Law Silences Democracy*, *supra* note 21.

98. *See Expiry Law*, *supra* note 17, arts. 3-4.

many crimes remaining unpunished in the name of political unity and patronage.⁹⁹

Further, the Expiry Law no longer served a purpose. More than sixty cases re-opened in 2005 under President Tabare Vazquez pursuant to Article 4 under the Expiry Law led to the conclusion that thirty-eight people died at the hands of the military and the attribution of culpability for such crimes.¹⁰⁰ Following the May fiasco when the Uruguayan Congress failed to repeal the law, President Mujica allowed for the re-opening of up to eighty cases of alleged human rights violations.¹⁰¹ These two mass re-openings of cases, combined with the thirty-year sentence of Bordaberry in 2007 after finding him “guilty of violating the constitution by shutting down Congress . . . and of rights violations in . . . other . . . cases involving disappearances and murder”¹⁰² suggests that the law had run its course. The exceptions are now beginning to swallow the rule, whether the law remained in place or not.¹⁰³

Since the exceptions were beginning to swallow the rule and many of the worst offenders had already been punished, some argue that repealing the law would have very little practical effect and is thus unnecessary.¹⁰⁴ However, a repeal of the law is far from unnecessary, and while it may be

99. See *Uruguay’s Expiry Law Silences Democracy*, *supra* note 21.

100. Juan Nivarez, *Jose Mujica, Uruguay Re-Opening 80 Cases of Human Rights Violations*, TOONARI POST (July 9, 2011), <http://www.toonaripost.com/2011/07/world-news/jose-mujica-uruguay-re-opening-80-cases-of-human-rights-violations/>.

101. *Uruguay Open to Rights Cases of Dictator Era*, *supra* note 22. Mujica, a former political prisoner during the dictatorship, has been enigmatic throughout this process. He ran on a platform partially dedicated to the repeal of the Expiry Law, but has since changed position and asked that Congress not repeal the law. *Id.* However, Mujica has rejected a “national agreement” proposal from retired military officers that would have effectively avoided any more investigations or trials. *Id.*

102. *Former Uruguayan Dictator Gets 30-Year Prison Sentence for Coup*, LATIN AMERICAN HERALD TRIBUNE (Nov. 25, 2010), <http://www.laht.com/article.asp?CategoryId=23620&ArticleId=352106>. Bordaberry’s arrest and investigation, though it was for human rights abuses among other crimes, was not initiated under Article 4 executive authorization, but was not covered under the Expiry Law since Bordaberry was a Civilian leader. *Id.*

103. *Id.* One author observed:

According to some, the law is also riddled with loopholes—it permits prosecution of forced adoptions of political prisoners’ children and of crimes committed abroad (a category that includes the vast majority of kidnappings)—many of the worst era’s offenders, including two former de facto presidents, have already been convicted.

The Economist Analyzes Uruguay’s Debate on the “Expiration Law”, MERCOPRESS (Nov. 25, 2010), <http://en.mercopress.com/2010/11/25/the-economist-analyzes-uruguay-s-debate-on-rejecting-the-expiration-law> [hereinafter *The Economist Analyzes*].

104. *Id.*

the case that some of the worst offenders have been punished,¹⁰⁵ this is not equivalent to every victim having their day in court, and leaving the law as it stood would do very little to restore the trust in the government.

The repeal of the law also gives legitimacy to the IACHR, to whose binding authority Uruguay voluntarily submitted.¹⁰⁶ The refusal to recognize the IACHR's recent ruling invalidating the Expiry Law on the grounds that it was inconsistent with the American Convention on Human Rights would essentially have allowed Uruguay to opt out of their international obligations whenever Congress or the majority of citizens decided that those obligations were inconvenient or not in the best interests of the country.¹⁰⁷ In an increasingly globalized world, international legal bodies are only as strong as the respect given by the states that voluntarily submit to them. Allowing Uruguay to opt out of their international obligations as a matter of convenience could lead to the increased disrespect for international legal bodies.

Similarly, a refusal to repeal or at least alter the law would have detracted from the Uruguayan Supreme Court's legitimacy. In a system that is supposed to resemble that of the United States in terms of checks and balances and separation of powers,¹⁰⁸ it is a dangerous proposition to give continuing legal effect to a law twice invalidated as-applied by the Uruguayan Supreme Court.¹⁰⁹ Similar to the international context, had Uruguay allowed the unconstitutional law to stand, it may have taken away from citizens' confidence in the internal judicial system and thwarted the continuing entrenchment of a long-lasting democracy.

Finally, and not of minimal significance, the invalidation of the Expiry Law allows Uruguay to fall in line with the positive trends in Latin

105. *Id.*

106. See American Convention on Human Rights, *supra* note 30, at pmb1.; *American Convention on Human Rights: Members Chart*, *supra* note 30.

107. *The Economist Analyzes*, *supra* note 102. The reference to the "Uruguayan people" is a reference to the 1989 Referendum and the 2009 Referendum, in which the citizens voted to keep the Expiry Law. See *Expiry Law, Two Decades Later, the Discussion is Renewed*, *supra* note 23. President Mujica even cited the results of the referendum as a valid reason for not repealing the law. See *Major Setback*, *supra* note 36 (writing that "Mujica . . . requested the bill should not be annulled, arguing it would be ignoring two referendums with serious institutional consequences and could trigger electoral backlash for the ruling coalition in the future."). While Mujica's argument that repealing the law would have meant disrespect of the will of the people may have been valid before the IACHR's ruling invalidating the law, it now appears that there is no remaining legitimate justification for repealing the law, and consequently, that the platform for Mujica's argument has disappeared.

108. See 1967 Constitution, *supra* note 1.

109. See *The Economist Analyzes*, *supra* note 102.

America, and encourages Brazil and Chile to follow suit.¹¹⁰ As a result, Uruguay must be commended for its courageous and inspirational step toward justice.

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110. See *Amnesty Law Limits Brazilian Soul Searching*, *supra* note 86 (referencing that Brazil still has not repealed its amnesty law as of 2011); *Latin American Amnesty Laws Annulled*, *supra* note 81.

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