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The Many Faces of Impunity: a Brief History of Uruguay's Expiry Law

LSE Ideas

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Over the past few weeks, the fight against the impunity still surrounding the perpetration of grave human rights crimes (torture, enforced disappearance, and mass prolonged imprisonment) committed during the 1973-1985 military regime in Uruguay has been gathering momentum. Although impunity has many faces – political, judicial, cultural, the focus of the campaign is Law 15,848 on the Expiry of the Punitive Claims of the State (Caducidad de la Pretensión Punitiva del Estado), or simply the Expiry Law. Without a doubt, the Expiry Law symbolically embodies impunity for many in Uruguay.

The fight against the Expiry Law is not something new, as its origins date back to the day after that Law was enacted by Parliament on 22 December 1986. Two major attempts to “eliminate” the Expiry Law, in 1989 and in 2009 respectively, failed. It seems, however, that we are now weeks, if not days away, from seeing the end of the Expiry Law. How did we get here? And, is the Expiry Law set to go once and for all this time?

Military rule, repression and transition

In the twentieth century, Uruguay was frequently referred to as the ‘Switzerland of Latin America’, a deserved label which underscored the country’s tradition of liberal and participatory democracy (exceptional when compared to the turbulence and authoritarianism of its neighbours); Uruguay’s growing financial and economic markets; rising urban middle class, and high levels of education. By the late 1970s, in the backdrop of the Cold War, the Switzerland of Latin America had, however, more and more come to resemble its neighbours, it similarly being a victim of economic crisis, social and trade union polarisation and conflict, and political violence characterised by the emergence of left and right-wing armed groups. The civic-military regime that took over in June 1973 inaugurated a twelve-year long reign of fear, which combined economic mismanagement with political terror. Uruguay no longer was the “exception” of the region, it having earned by this time another ‘appropriate’ tag as the Torture Chamber of Latin America, due to the brutality of its human rights repression.

In the Southern Cone, the Uruguayan regime most closely resembled a totalitarian system, as the country’s small size and population permitted penetration into both public and private lives. Military rule achieved unprecedented physical control of the country; each citizen was even classified as A, B or C according to political reliability and the possible threats to the state. The regime installed a culture of fear, characterised by *inxile* – a desire to hide and not be seen by the omnipresent state.

The repression left an unprecedented human toll: between 300 to 500,000 people left for exile; over 60,000 people were arrested and/or detained; between 1973 and 1977, Uruguay had the highest percentage of political detainees per capita in the world; there were approximately 5,000 long-term political prisoners; about 200 Uruguayans disappeared, mostly in Argentina, but also Chile, Colombia, Bolivia and Uruguay itself; finally, there were plenty of children detained with their parents, and several others that disappeared and/or were illegally appropriated by repressors.

The transition to democracy was sealed through negotiations and the so-called “Naval Club Pact” of August 1984 between the armed forces and the political parties, which basically restored the previous political system. Many argue that it was at this juncture that the impunity for the perpetrators of human rights crimes was agreed; others state that the issue never reached the negotiating table. Notwithstanding these debates, impunity would soon be sealed with the adoption of the Expiry Law.

The Expiry Law – what is it all about?

In the early days of transition, the main priority of the new government by the centre-right Colorado party headed by President Julio María Sanguinetti was national pacification, the so-called *cambio en paz* (peaceful change). The government’s National Pacification Project of March 1985, in fact, provided for the amnesty and release of all political prisoners (with some exceptions); the social reintegration of returning exiles; and the restoration of public jobs to employees unfairly dismissed during the dictatorship. The executive’s human rights policy actively and deliberately sidelined criminal prosecutions against those responsible for human rights abuses – although these crimes had been explicitly and expressly excluded from the remit

of Amnesty Law 15,737. Still, it became clear quite soon that the Sanguinetti administration wished to cover the crimes of the recent past under a mantle of silence and oblivion.

As early as April 1985, victims of grave human rights violations and/or their relatives began to bring to the courts cases of human rights abuses perpetrated by security forces during the years of state terrorism. By December 1986, over 700 such cases were under investigation. As a consequence, the armed forces became increasingly restless, openly stating they would not comply with judicial summons to appear in court. The executive portrayed this situation as a possible institutional crisis, pointing to the likelihood of another military coup. In this context, following three previous failed attempts, on 22 December 1986 Parliament enacted the Expiry Law, effectively bringing to an end the possibility of achieving justice and clarifying the past.

The Expiry Law has shaped the trajectory of transitional justice in Uruguay since the early days of transition, it being one of the most relevant legal obstacles to prosecutions up to present. The Law consists of three chapters, dealing respectively with the prosecution of military and police officers; forced retirement of military personnel in 1974; and the role of civilian political institutions and armed forces in relation to promotion of officers. The essence of the law is the prevention of judicial proceedings against military and police officers for human rights violations. The Law is an amnesty "under cover" – the word amnesty never being mentioned in its rather long name. Only four articles consolidate the state of impunity:

- Article one provides that, as a consequence of the logic of the events stemming from the Naval Club Pact and to complete the transition to full constitutional order, the state renounces to its right to prosecute members of the military and police with respect to crimes committed until 1 March 1985;
- Article two excludes from the Law's remit cases for which there was an indictment in December 1986 and crimes committed for economic gain;
- Article three establishes that judges have to demand – on a case-by-case basis – to the Executive whether the case at hand is covered or not by the Law;
- Article four states that denunciations regarding disappearances presented until December 1986 have to be transmitted to the Executive, which has to order investigations to clarify these facts.

The law, generally known as ley de impunidad (impunity law), was controversial from the very beginning: first, its provisions placed property rights above the right to life, permitting prosecutions for economic property crimes, but not for violating basic human rights. Second, the law undermined the separation of powers and judicial independence, and severely limited the rights of individuals to initiate prosecutions. Third, it authorised the Executive to carry out investigations on disappearances which are normally under the remit of the judiciary.

Between the late 1980s and early 2000s several governments sponsored policies of silence and oblivion; still, under the surface, opposition to the Expiry Law never faltered. In particular, since the late 1990s, the fight against impunity took a legalistic turn, with the identification of exceptions that would permit the circumvention of the Expiry Law. In fact, cases falling outside the Law's remit began to be presented to the courts, such as crimes committed before the period of the de facto government; by members of the high command before and/or during the dictatorship; by civilians; crimes committed abroad; and case of illegally appropriated children.

This strategy – initially developed by human rights organisations and their lawyers – eventually permitted the re-opening of some judicial investigations and proceedings, which had been paralysed for over a decade. Human rights eventually became part of the executive's policy only under the left-wing Frente Amplio administration of President Tabaré Vázquez, 2005 to 2010. During Vázquez's Presidency, over sixty cases of past human rights abuses were excluded from the Expiry Law and justice is now running its course in some of the most emblematic human rights crimes Uruguay has witnessed, such as the kidnapping and assassination of ex-legislators Michelini and Gutiérrez Ruiz in Buenos Aires in 1976, and the enforced disappearance of Elena Quinteros also in 1976.

Uruguay – the country that voted twice for impunity?

Uruguay's exceptionality however endures, this time in terms of transitional justice where Uruguay is the only country in the world to have submitted its amnesty law to public vote . . . twice!

On 23 December 1986, the day after the Expiry Law had been adopted in a Parliament session that almost culminated in a gunfight, human rights NGOs and important political figures in Uruguay announced the intention to hold a referendum on the law. This initiative aimed to use for the first time the referendum provision of the Uruguayan Constitution, according to which referenda can be held on the condition that 25% of the electorate signs to support the initiative within a year of a contested law's promulgation. The campaign called for people to be able to express their opinion on the issue and was immediately supported by a whole array of social and political organisations, and parties that had opposed the law in Parliament. After many vicissitudes, the required number of signature was reached and the referendum held on 16 April 1989, when with a turnout of over 80%, the amnesty law was upheld, with 57% of the votes. The defeat at the referendum had a major impact, as the result constituted a shattering defeat for human rights, and the cause of truth and justice. Consequently, the theme of past human rights abuses faded away from the political agenda and public opinion, as the referendum result was accepted as definitively closing the debate on past human rights crimes from the political and legal points of view.

Since the late 1990s, Uruguayan society has slowly begun coming to terms with the legacy of the recent past and the scars left behind by the experience of military rule, especially the costs of the human rights repression. In the last decade, significant initiatives have taken place in transitional justice and accountability, including the establishment of a truth commission to investigate the fate of disappeared-detainees, the Peace Commission, which worked between 2000 and 2003. Despite its shortcomings and limitations, it remains the first project ever to be sponsored by the Uruguayan state, after over a decade of silence and amnesia on these questions. Since 2005, prosecutions have resumed and some sentences handed down by the courts, such as in the case of disappeared teacher Elena Quinteros Almeida for which former Foreign Affairs Minister was sentenced to twenty years' imprisonment in April 2010, or the twenty-five years' sentence to former dictator Gregorio Alvarez handed down in October 2009 and confirmed on appeal in August 2010. Bodies of Uruguayans disappeared have been recovered and identified in Argentina, two of them in Uruguay too in 2005 and 2006. There has been some limited progress on the question of reparations, for which laws have been enacted by Parliament, and also in relation to the opening of state archives, particularly in the Ministry of Foreign Affairs.

Twenty years after the 1989 referendum on the Expiry Law, another grassroots initiative by social, human rights and trade union organisations, culture and public figures, members of the Parliament, and political parties worked to achieve the nullification of the Expiry Law.

The principal objective of this campaign was terminating the culture of impunity that continues to prevail even under democracy. The nullification of the Law was to be achieved through a constitutional reform project that required first the collection of the signatures of 10% of citizens habilitated to vote, i.e. around 250,000 – achieved on 24 April 2009; second, 50% plus one vote on the day of the plebiscite, held on 25 October 2009, to coincide with scheduled national elections. At the ballot box, 52% of the voters maintained the Law. There has not been much discussion of the significance and consequences of this event, or attempts at explaining the result. During some interviews I carried out in November 2009, several possible reasons were suggested, such as the lack of a “NO vote” option; the exclusive focus on the presidential and parliamentary elections which sidelined the plebiscite; the inability to present the question of the nullification as transcending political parties or affiliations, it being a human rights questions; and, the lack of support from the political parties. Further, although voting is a kind of national passion in Uruguay, questions such as accountability for past human rights crimes cannot be subject to a vote. In these instances, it is a fundamental obligation and duty of the state to clarify these abuses, especially the abhorrent and permanent crime of enforced disappearance. These matters which involve human life and human dignity are essential rights recognised by several human rights treaties and decisions by international human rights courts and bodies which cannot be subjected to the will of the voters.

Still, unlike the 1989 referendum which inaugurated a decade of silence on questions of truth and justice, the 2009 plebiscite hailed the beginning of a flurry of activities to widen the discuss on the fight against impunity and achieve the nullification of the law by other means.

Are we days away from the end of the Expiry Law?

A few days before the October plebiscite, the fight against the Expiry Law was already gaining strength. In 2008, Public Prosecutor Guianze had presented to the Supreme Court an unconstitutionality appeal against the Expiry Law. On 19 October 2009, only six days before the plebiscite, the Supreme Court of Justice declared the Expiry Law “unconstitutional” for violating several articles of the Uruguayan Constitution and for its incompatibility with international human rights treaties. The Court's sentence, however, only applied to the case of Nibia Sabalsagaray that had died under torture in 1974. Still, two more requests for unconstitutionality were presented in December 2009 by Public Prosecutor Tellechea, relating to the “Human Rights Organisations” and “García Hernández, Amaral and others” cases. On 20 June 2010, the unconstitutionality of the Expiry Law was declared in the “Human Rights Organisations” case, which covers twenty murders committed in Uruguay between 1973 and 1976. As in the Sabalsagaray case, the Expiry Law was seen as breaching various articles of the Uruguayan Constitution (including the principle of the separation of powers) and violating international human rights norms, such as those of the American Convention on Human Rights. A similar sentence can be expected in the “García Hernández, Amaral and others” case which relates to the murder of five Tupamaros militants in 1974.

The fight against the Expiry Law has also had an international dimension, thanks to the Gelman case. In fact, Argentine poet Juan Gelman, who finally located his illegally appropriated and missing granddaughter Macarena in March 2000 in Montevideo, presented a case together with her to the Inter-American Commission on Human Rights. Given the repeated failures and denials of justice in Uruguay, Juan and Macarena Gelman presented to the Commission the case relating to the forced disappearance of María Claudia García Iruretagoyena de Gelman (Macarena's mother and Juan's daughter-in-law) and the suppression of the identity and nationality of María Macarena Gelman, daughter of María Claudia García and Marcelo Gelman. The case also involves the denial of justice, impunity, and the suffering caused to Juan Gelman, his family, Macarena, and the relatives of María Claudia as a result of the failure to investigate the facts and prosecute and punish those responsible by virtue of the Expiry Law. The case, initially presented in May 2006 and considered admissible in March 2007, reached the merits stage in July 2008 with recommendations for Uruguayan to comply with. Given that by December 2009 Uruguay had not fully complied with the Commission's recommendations, the latter decided to send the case to the Inter American Court of Human Rights in January 2010 – the first time ever Uruguay has had to face this tribunal. Uruguay is charged with violations of the right to life, to freedom and human integrity, to justice, and the right to identity. The Court's sentence is expected for October 2010.

Some recent developments in the fight against the Expiry Law do in fact originate from Uruguay's expected condemnation by the Court. It is highly likely that the Court will find Uruguay in breach of its international human rights obligations because of the Expiry Law. This outcome is easy to predict in light of recent jurisprudence by the Court on the question of amnesty laws and their incompatibility with the American Convention (see the judgements in the Barrios Altos (2001) and Almonacid (2006) cases, in which Peru and Chile were respectively condemned). To avoid reaching the sentencing stage and the associated international negative publicity, various projects have been considered to either derogate or nullify the Expiry Law. In July 2010, the Ministry of Foreign Affairs was working on a project to eliminate the Expiry Law quickly by nullifying it. In August 2010, the governing Frente Amplio party approved an interpretative draft law to be presented to Parliament in September that declares articles one, three and four of the Expiry Law as violating the Constitution and provides that the Expiry Law can no longer be employed to suspend judicial investigations into the crimes committed during military rule.

Conclusion

This month, September 2010, is likely to see the end of the Expiry Law, a historic event in Uruguay, which many wish to see. Although amnesty laws were a common feature a couple of decades back, being adopted either during or immediately after military rule in most Latin American countries (Argentina, Brazil, Chile, El Salvador, Guatemala, Peru, Uruguay, etc.) to create a life of comfortable impunity for kidnappers, torturers, murderers and rapists, over the last few years we have seen the opposite trend. From Argentina, to Chile, Peru and Uruguay, amnesty laws have been attacked and challenged in various ways. Trials have since been reopening in Argentina, Chile, Peru and Uruguay.

What difference will it make once the Expiry Law is gone? Many cases, over sixty, are already being investigated and more than four hundred have been denounced to the courts. Legally, the end of the Expiry Law will terminate the breach of the separation of powers, given that the judiciary will no longer need to consult the executive when cases of past human rights crimes are presented, and, consequently, the arbitrary justice that allowed investigation in some cases and not in others. Symbolically, impunity will come to an end too. In practice, however, the culture of impunity in Uruguay is not simply the Expiry Law – though the latter did play a major role. For truth, justice and reparations to become a reality much is still needed beyond simply the removal of the Expiry Law: political will from the government, cooperation from the Armed Forces, the opening of state archives, material compensations to the victims and symbolic reparations to society. The end of the Expiry Law can only be welcomed, but it will not automatically end the culture of impunity, which has strong and deep roots.

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