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Uruguay: Politics of the Past – The Dialectic of Forgetting and Remembering

1 The Experience of Dictatorship

Uruguay can be seen as a special case in many respects within the Latin American context. After independence (1828) and the adoption of the first constitution (1830), a relatively stable system of rule quickly established itself. Successful world market integration, based primarily on the export of agricultural goods, created economic prosperity. Thanks to progressive social legislation and welfare state elements, living conditions in Uruguay were among the highest in the world until the middle of the twentieth century.

The 1917 constitution created the instrument of *coparticipación*, through which the opposition party could be involved in governmental responsibility. Politically motivated coups such as were common in Argentina, for example, could thus be prevented.¹ The two major parties, the *Partido Colorado* and the *Partido Nacional*, also known as *Blancos*, were founded in the 1830s and still shape political life today. These are the oldest parties in Latin America that are still relevant. Traditionally, the *Colorados* were the party of the liberal bourgeoisie, the *Blancos* the party of the rural elites and large landowners. Over time, however, they developed into classic ‘catch-all’ parties. The stable two-party system was influential until the 1970s. In 1971 the *Frente Amplio* was founded. This was a left-wing alliance which provided a political home to all those who did not find their interests represented in the two major parties. The political spectrum of the *Frente Amplio* ranged (and still does) from communist groups to the Christian Democrats.

After the coup in 1973, the *Frente Amplio* was banned by the military and its activists were persecuted. In the first elections after the dictatorship, however, it gained around 20 percent of the votes. The *Frente* continuously built up its electoral success, became the strongest parliamentary group in the 1999 parliamentary elections and won the 2004 presidential elections with an absolute majority.²

Note: Translated by Kirsten Kearney.

1 Ronald H. McDonald and Martin Weinstein, ‘Balancing Growth and Democracy in Uruguay,’ in *Latin American Politics and Development*, ed. Howard J. Wiarda and Harvey F. Kline (Boulder: Westview Press, 2000), 295–311, 295–305.

2 Veit Straßner, *Die offenen Wunden Lateinamerikas: Vergangenheitspolitik im postautoritären Argentinien, Uruguay und Chile* (Wiesbaden: Verlag für Sozialwissenschaften, 2007), 169 f.

In addition to party-political *coparticipación*, the Uruguayan political system is also characterized by distinct elements of direct democracy.³ From 1917 to 2019 there were 30 national plebiscites and referendums.⁴ In Uruguay, it was largely possible to channel political conflicts and resolve them through parliamentary or plebiscitary methods. Therefore, there was no significant experience of autocracy in the political history of Uruguay until the crisis in the 1970s.

1.1 Relevant Period

As opposed to the situations in Chile and Argentina, the Uruguayan military dictatorship did not begin with ostentatious military operations. Instead, a creeping erosion of democratic institutions occurred, which culminated in the dissolution of parliament by the democratically elected President Juan María Bordaberry by decree on June 27, 1973. Dieter Nohlen speaks of a ‘cold coup’ in this context.⁵ Bordaberry’s predecessor Jorge Pacheco declared a state of emergency as early as 1968.

Bordaberry initially remained in office as a puppet of the military, but the new centre of power was the National Security Council (*Consejo de Seguridad Nacional*; COSENA). Established in February 1973, this council, in addition to the President and the Cabinet, primarily included the commanders of the three branches of the armed forces (the Army, the Air Force and the Navy).

The dictatorship ended with a negotiated transition that lasted five years. After the elections in November 1984, *Colorado* politician Julio María Sanguinetti took over the presidency on 1 March 1985.⁶

1.2 Political Background

The political stability of Uruguay was based not least on the prosperous export-orientated economy, which also made it possible to finance the welfare system and social welfare programmes. From the middle of the twentieth century, however, the demand for Uruguayan agricultural products declined. The domestic industry reacted

3 Andrea Vargas Cárdenas, *Referéndum y plebiscito en Uruguay: Mecanismos de aplicación de la consulta popular y ejercicio en casos destacados* (Santiago and Valparaíso: Biblioteca del Congreso Nacional de Chile, Asesoría Técnica Parlamentaria, 2020), accessed 11 April 2022, https://obtienearchivo.bcn.cl/obtienearchivo?id=repositorio/10221/28313/1/Referendum_plebiscito_y_consulta_popular_en_Uruguay_Rev_BH.pdf.

4 Yanina Welp and Nadja Braun Binder, ‘Initiativen und Referenden in Lateinamerika,’ in *Jahrbuch für direkte Demokratie 2017*, ed. Nadja Braun Binder et al. (Baden-Baden: Nomos, 2018), 60–85, 75f.

5 Dieter Nohlen, ‘Uruguay,’ *Handbuch der Dritten Welt*, Bd. 2: Südamerika, ed. Dieter Nohlen and Franz Nuscheler³ (Bonn: Dietz, 1992) 477–509, 482.

6 Straßner, *Die offenen Wunden Lateinamerikas*, 162f.

slowly to this change; the gross national product fell and the inflation rate rose. At the same time, the exposure of cases of corruption damaged the credibility of the elites. The government had to react to these developments. The social and economic countermeasures led to public protests. In 1967 and 1968 alone, 1,400 work stoppages and strikes took place across the country.

What happened next was what is repeatedly described in the literature as the ‘democratic path to dictatorship’.⁷ The government tried unsuccessfully to bring the situation under control using censorship, bans on left-wing groups and emergency laws. Faced with this situation, President Jorge Pacheco opted to use the armed forces to fight insurgency and break strikes. At the same time, he had the strikers drafted into military service. This militarization of the conflict is particularly remarkable when one considers that the armed forces had hardly played any political role in the history of Uruguay up to this point.⁸

This increase in power of the armed forces, unusual for Uruguay, shows the growing inability of the democratic institutions to respond appropriately to the crisis situation. And this crisis became even more acute. In the 1960s, militant leftist groups emerged in many Latin American countries. In Uruguay, the most important group was the *Movimiento de la Liberación Nacional – Tupamaro* (National Liberation Movement Tupamaro; MLN-T).⁹ The MLN-T, founded in 1966 and organized in a cell-like structure, was an urban guerrilla group who wanted to provoke the government through their campaigns. The aim was to expose the repressive character of the political system and thus encourage the people to revolt. Up to the end of 1969, the *Tupamaros* gained in popularity, mainly through attention-grabbing and sometimes humorous campaigns, which were used to highlight corruption and poke fun at the police and public dignitaries.¹⁰ Their campaigns initially met with a very positive response. Martin Weinstein comments on this: ‘Extolling them for their efficiency, wit,

7 José Miguel Busquets and Andrea Delbono, ‘La dictadura cívico-militar en Uruguay (1973–1985): aproximación a su periodización y caracterización a la luz de algunas teorizaciones sobre el autoritarismo,’ *Revista de la Facultad de Derecho* 41 (2016): 61–102, 76.

8 Wolfgang S. Heinz, ‘Determinants of Gross Human Rights Violations by State and State-sponsored Actors in Uruguay 1960–1990,’ in *Determinants of Gross Human Rights Violations by State and State-sponsored Actors in Brazil, Uruguay, Chile, and Argentina 1960–1990*, ed. Wolfgang S. Heinz and Hugo Frühling (Den Haag, Boston and London: M. Nijhoff cop., 1999) 219–387, 231–254.

9 Alfonso Lessa, *La revolución imposible: Los Tupamaros y el fracaso de la vía armada en el Uruguay del siglo XX* (Montevideo 2010: Fin de Siglo); Thomas Fischer, ‘Die Tupamaros in Uruguay: das Modell der Stadtguerrilla,’ in *Die RAF und der linke Terrorismus*, vol. 2, ed. Wolfgang Kraushaar (Hamburg: Hamburger Edition, 2006), 736–750.

10 Servicio Paz y Justicia, Uruguay, *Uruguay Nunca Más: Informe sobre la violación a los Derechos Humanos (1972–1985)* (Montevideo: SERPAJ, 1989), 60f.; Lawrence Weschler, *A Miracle, a Universe: Settling Accounts with Torturers* (New York: Penguin, 1990), 100–111. For example, once the MLN-T raided a casino. When the casino employees complained that their tips had been stolen, the *Tupamaros* refunded the lost money. In another action, they stormed an exclusive nightclub and smeared the walls with the slogan *O bailan todos o baila nadie* (‘Either we’re all dancing or no-one gets to dance’).

and Robin Hood image, Uruguayans seemed proud of the fact that their guerrillas were the best in Latin America.¹¹

The government, on the other hand, reacted to these activities and to the worsening social situation by declaring a state of emergency in 1968 and, later, under the presidency of Bordaberry, an internal state of war, which went hand in hand with the suspension of basic civil rights.¹²

The *Tupamaros* intensified their actions, using raids to gain weapons and strategic materials. They wanted to secure the release of imprisoned *compañeros* by kidnapping important figures such as the British ambassador, the consuls of Brazil and Japan, politicians and industrialists. From the end of 1969 onwards, the clashes between the MLN-T and the security forces increased in severity. The 'Robin Hood phase' of the movement was over. The *Tupamaros* now relied on armed guerrilla combat. They executed police officers who were responsible for torture and carried out attacks on private homes and clubs belonging to the political and economic elites. With the increase in violence and the rising number of fatalities, public opinion turned more and more against the *Tupamaros*. A turning point was the murder of the CIA employee and father of nine, Dan Mitrione, who was in Uruguay to train the security forces in interrogation and methods of torture.¹³ The situation deteriorated even further – attacks on high-ranking military personnel, high-profile prison break-outs and the emergence of paramilitary anti-guerrilla groups fuelled fears of a civil war-like situation.

In the run-up to the November 1971 elections, the *Tupamaros* paused their campaigns to support the new *Frente Amplio*. For the first time, this leftist party alliance offered a real alternative to the two major parties that had dominated for around 100 years.¹⁴ During the ceasefire period, which the MLN-T maintained, the security forces did not remain idle but revised their anti-terror strategy. In November 1972, the *Tupamaros* were finally put down.¹⁵ According to official sources, by this date 62 *Tupamaros* had died and 2,873 had been arrested. A further 844 faced arrest warrants; the special forces reported 18 dead and 25 wounded from their ranks.¹⁶

The real military coup actually took place *after* the *Tupamaros* were quashed. The armed forces, who now took on a *political* role, demanded more powers in order to be able to fight the social roots of subversion. On 27 June 1973, President Bor-

11 Martin Weinstein, *Uruguay: Democracy on the Crossroads* (Boulder and London: Westview, 1988), 40.

12 *Uruguay Nunca Más*, 39–80.

13 Marisa Ruiz, *La piedra en el zapato: Amnistía y la dictadura uruguaya: La acción de Amnistía Internacional en los sucesos de mayo de 1976 en Buenos Aires* (Montevideo: Universidad de la República, 2006), 107.

14 Ernst-J. Kerbusch, 'Die Wahlen vom 28. November 1971 in Uruguay,' *Verfassung und Recht in Übersee* 5 (1972): 387–398, 394.

15 Weinstein, *Uruguay*, 40 f.

16 *Uruguay Nunca Más*, 65 citing government information.

daberry dissolved the parliament and thus sealed the supremacy of the military over the political system. Although initially the facade of a civil-military government was maintained, with the civilian Bordaberry remaining in office as president until 1976, the actual power shifted more and more to the National Security Council COSENA, established in February 1973, in which the representatives of the three armed forces held the decisive positions. These representatives in turn saw legitimacy in their role in the fight against subversion. They systematically expanded the power of the military, as evidenced by the increase in members of the security forces, which grew from 43,123 in 1970 (including 21,267 soldiers) to 69,200 (including 42,764 soldiers) in 1985.¹⁷

The military, who were well-equipped in terms of personnel and logistics and whose power was not subject to any real institutional restrictions, subsequently tried to prevent any political activity in the country, in order to remove what they identified as the causes of the political, economic, social and moral crisis in Uruguay. After 1974, for example, the unions were dissolved, their assets confiscated and their leading members arrested. Likewise, the traditional *Universidad de la República*, at the time the only university in the country, was taken over by the military.¹⁸ Political parties were banned. Only the two traditional parties (*Colorados* and *Blancos*) were allowed to continue, although they were forbidden from undertaking any political activities.¹⁹

1.3 Ideological Justification

In the 1970s and 1980s, with very few exceptions, the armed forces seized power in almost every country in Latin America. As such, in the context of the whole continent, Uruguay is no exception. However, what is exceptional is that this military intervention exists against the backdrop of Uruguayan history, in which the armed forces had never engaged in the politics of the country. As in other countries, the Uruguayan armed forces justified their intervention in the political process with the ‘doctrine of national security’.²⁰ This is a pattern of interpretation that can be seen in the context of the Cold War. The National Security Doctrine assumes that Marxist subversives are trying to undermine the political order in the country and the consensus of values on which it is based. According to the narrative, the nation is in

17 Juan Rial, ‘Militares y Redemocratización,’ in *Cuadernos de Marcha* II/8 (1986): 26–39, 28, Fig. 1.

18 Cristina Contera, “La educación superior en Uruguay” *Avaliação: Revista da Avaliação da Educação Superior* 13/2 (2008): 533–554, 538–540.

19 Gerado Caetano and José Rilla, *Breve historia de la dictadura (1973–1985)* (Montevideo: Grupo Editor, 1987); Virginia Martínez, *Tiempos de Dictadura: Hechos, voces, documentos: La represión y la resistencia día a día* (Montevideo: Ediciones de la Banda Oriental, 2006).

20 Herbert S. Klein, ‘La Seguridad Nacional y la destrucción de regímenes democráticos en América Latina,’ *Políticas de la Memoria* 18 (2018/2019): 49–63.

an internal state of war that differs from ‘regular’ wars in that the ‘enemy’ is not clearly recognizable, but rather infiltrates organizations and institutions. Any citizen could be an enemy and a threat to public order and national security. The armed forces, it is argued, therefore have the task of identifying these enemies within, exposing them and rendering them harmless. For this they need a free hand. If they were bound by strict legal requirements in their struggle against subversion, the only beneficiaries would be the actual subversives who want to destroy this order. For this reason, according to this narrative, basic and human rights as well as the principle of the rule of law can be subordinated to the higher goal of ‘national security’.²¹

Three years after the coup, the commanders-in-chief of the Uruguayan armed forces published a two-volume, several hundred-page work based on intensive intelligence work, in which they explained the threat of subversion and therefore the need for military intervention. The guiding narrative of this document is that of global Marxism, which they claim is trying to infiltrate and undermine the societies of Latin America. This advance of Marxism, in which all possible measures including violence are used, threatens societies at their core. Communism would deliberately look for possible avenues to use its ‘demoralizing and destructive techniques.’²² By publishing this work, the armed forces wanted to respond to the ‘smear campaigns from home and abroad’ and prove they had no truth in them. This document makes clear the reasons why the armed forces and security forces had been given their task of fighting subversion.²³

1.4 Structures of Persecution

The human rights organization *Servicio Paz y Justicia* (Service Peace and Justice; SERPAJ) aptly characterized the period of the military dictatorship in the foreword of its 1989 report on the crimes of the dictatorship when it wrote:

The ‘war’ in Uruguay lacked anything spectacular like the bombardment of the seat of government by Pinochet in Chile or the genocide of thousands of people disappeared by the Argentinian military junta. But it was characterized by an unprecedented level of finesse. It was a silent and selective repression taking carefully-measured steps until the entire population was finally under control. Our country was occupied by our own troops.²⁴

Uruguay had once been a shining example of a liberal state, but during the dictatorship its citizens were subjected to systematic control, oppression and persecution.

²¹ José Comblin, *The Church and the National Security State* (Maryknoll: Orbis Books, 1979).

²² República Oriental del Uruguay, Junta de Comandantes en Jefe, *La Subversion: Las Fuerzas Armadas al Pueblo Oriental*, Bd. I (Montevideo, 1977), 334.

²³ República Oriental del Uruguay, *La Subversion*, 2.

²⁴ *Uruguay Nunca Más*, 7.

There are good reasons to say that the repression in Uruguay definitely affected the largest number of people in relation to overall population size.²⁵ All citizens were divided into three categories (A – B – C) according to their ‘level of danger’. A-citizens were considered politically harmless and could, for example, work in public service. B-citizens were often observed by the security forces because they were viewed as ideologically suspicious. Their freedom of movement was restricted and they could only seek employment in the private sector. C-citizens, on the other hand, were considered enemies and lost nearly all their civil rights. The level of control exercised over the population went so far that even private birthday parties had to be registered and approved, elections in sports clubs were monitored, former officers ran schools, etc.²⁶ Over 16,500 Uruguayans lost their jobs for political reasons.²⁷

In addition to the establishment of this surveillance state, the military also used concrete measures of repression against actual or alleged opponents of the regime. Detention and torture were the main instruments of political persecution. In the 1970s, Uruguay was regarded as the country with the highest rate of political prisoners. Around 6,000 people were officially detained for long periods of time for political reasons. In addition, there were countless illegal or short-term imprisonments. It can be assumed that there were around 25,000 political prisoners in total.²⁸ Detention – usually associated with ill-treatment and torture – was the main instrument of political repression. There were two main prisons: *Libertad* (Freedom) Prison for male prisoners and *Punta de Rieles* for female prisoners.²⁹ There were also numerous other places where political prisoners were held. A commission of historians set up by the government published an extensive study in 2008; this reckoned that there were around 60 other, sometimes clandestine, detention centres.³⁰

Around 50 percent of the arrests were carried out by the army, 11 percent by the navy and a further 25 percent by the police.³¹ The detainee’s home was often ransacked or destroyed. Detention was frequently made worse by isolation: around 16 percent of inmates were held in solitary confinement for the entire period of their de-

25 Peter John King, ‘Comparative Analysis of Human Rights Violations under Military Rule in Argentina, Brazil, Chile, and Uruguay,’ *Statistical Abstract of Latin America* 27 (1989): 1043–1065, 1063.

26 Weschler, *A Miracle, a Universe*, 92.

27 Straßner, *Die offenen Wunden Lateinamerikas*, 165.

28 Jimena Alonso, ‘La prisión masiva y prolongada en perspectiva de género: Mujeres presas durante la dictadura uruguaya (1973–1985),’ in *El tiempo quieto: Mujeres privadas de libertad en Uruguay*, ed. Natalia Montealegre Alegría, Graciela Sapriza, María Ana Folle Chavannes (Montevideo: Facultad de Humanidades y Ciencias de la Educación, Universidad de la República, 2016), 53–73, 53.

29 For further information about *Libertad* prison and how it functioned see Walter Philipps-Treby and Jorge Tiscornia, *Vivir en Libertad* (Montevideo: Editorial Banda Oriental, 2003). To learn more about the situation for female prisoners see Alonso, ‘La prisión masiva’.

30 Álvaro Rico, ed., *Investigación histórica sobre la dictadura y el terrorismo de Estado en el Uruguay 1973–1985*, 3 Bände (Montevideo: Universidad de la República Oriental del Uruguay – Comisión Sectorial de Investigación Científica, 2008), Bd. 2, 44–47.

31 *Uruguay Nunca Más*, 121, Tab. 31.

tention.³² Detention was always associated with torture: only 1 percent of male and 2 percent of female inmates said they had not been tortured.³³

The military courts were responsible for all 'political' offences. All other crimes continued to be tried in the ordinary courts. This dual system carried through into the penal system: while criminals continued to be imprisoned in the normal prisons, which were under the control of the *Servicio Penitenciario*, the police's penal system, there were prisons for the political prisoners that were run by the armed forces. Two separate penal systems thus developed during the dictatorship.

Due to the large number of political prisoners and the fact that periods of time in captivity were sometimes very long, organizational structures developed among the prisoners, especially in the main prisons. The military leadership feared political activity *within* the prisons. In order to discipline the prisoners, between 17 and 19 prisoners who were considered political leaders were held hostage by the regime in secret detention centres in the interior of the country and regularly transferred to other centres.³⁴

Thousands of Uruguayans left the country to avoid imprisonment, torture and death. Uruguay had previously experienced immigration, but now, for the first time in its history, a mass exodus took place: between 350,000 and 500,000 people left the country. With a population of nearly 3 million (1980), this was a considerable proportion of the population.³⁵

However, quite a few Uruguayans were not able to save their lives by fleeing across national borders. Due to the regional cooperation of the military governments within the framework of the so-called *Operación Cóndor*, many were arrested in neighbouring countries and, in some cases, killed.³⁶ A total of 183 Uruguayans 'disappeared' during the military dictatorship – the vast majority in Argentina.³⁷ It is probably Uruguay's liberal and constitutional tradition and the relative lack of war-mongering in Uruguayan history that is responsible for the relatively low number of deaths within the country itself: only 26 cases of Uruguayans who disappeared in their own country are documented. In addition, however, the Truth Commission es-

³² *Uruguay Nunca Más*, 121–141.

³³ *Uruguay Nunca Más*, 152.

³⁴ *Investigación histórica sobre la dictadura y el terrorismo de Estado*, Bd. 2, S. 13; *Uruguay Nunca Más*, 234–238.

³⁵ Adela Pellegrino, 'Aspectos demográficos, 1963–1985,' in *El Uruguay de la dictadura (1973–1985)*, ed. Carmen Appratto et al. (Montevideo: Banda Oriental, 2004), 181–192.

³⁶ For more information about *Operación Condor* see Gabriela Fried, Francesca Lessa and Felipe Michelini, 'Uruguay. El Cóndor en la bruma,' in *A 40 años del cóndor: De las coordinaciones represivas a la construcción de las políticas públicas regionales en derechos humanos*, ed. Javier Palummo, Pedro Rolo Benetti and Luciana Vaccotti (Buenos Aires: IPPDH, 2015), 157–203; Luiz Cláudio Cunha, *Operación Cóndor: El secuestro de los uruguayos: Un reportaje del tiempo de la dictadura* (Montevideo: SERPAJ, 2017).

³⁷ Madres y Familiares de Detenidos Desaparecidos, *A todos ellos: Informe de Madres y Familiares de Uruguayos Detenidos Desaparecidos* (Montevideo: MFDD, 2004), 5–9.

established in 2000 confirmed the disappearance of six foreigners within Uruguayan territory.³⁸

Human rights organizations assume that, as in Argentina, around 25 children born in prison or abducted with their parents then disappeared. In addition, around 150 people were murdered or executed for political reasons during the years of the dictatorship and in the repression that preceded it.³⁹

Even if the actual number of victims appears low compared to other countries, it should be borne in mind that the total population of Uruguay at around 3 million is much smaller than that of Argentina (33 million) or of Chile (14 million).

1.5 Victim Groups

In numerical terms, political prisoners, usually also victims of torture and degrading treatment, make up the largest group of victims in Uruguay. Likewise, many people were subject to politically-motivated work bans or had to flee into exile. In the public consciousness and in political debate, however, these groups of victims play a lesser role compared to the adult *desaparecidos* and children who have disappeared or were born in prison.

1.5.1 The Victims of Political Imprisonment and Torture

For the Uruguayan military, the imprisonment of actual and alleged political opponents was their main instrument of political repression. The exact number of victims is hard to calculate. A commission of historians set up by the government in 2005 to investigate human rights violations documented cases of 5,925 male and 739 female long-term political prisoners who were held in the main prisons (*Libertad* for the men and *Punta Rieles* for the women). There were also 186 other female prisoners in inland detention centres. These are just the people who were convicted by the military justice system. In addition, there is an unknown number of people who were held informally or who were detained and mistreated for shorter periods of time.⁴⁰

The human rights organization SERPAJ carried out a survey of 313 former political prisoners in 1987.⁴¹ Even if it is not a representative survey in the strictest sense, it does give an insight into the characteristics of this group of victims. Most of the detainees were between 18 and 29 years old (62 percent) at the time of their arrest

³⁸ Comisión para la Paz, *Informe Final* (Montevideo: Comisión para la Paz, 2003), No. 45 und 54.

³⁹ Straßner, *Die offenen Wunden Lateinamerikas*, 165.

⁴⁰ Carla Larrobla and Fabiana Larrobla, 'Las investigaciones históricas de la Universidad de la República,' *ILCEA – Revue de l'Institut des langues et cultures d'Europe, Amérique, Afrique, Asie et Australie* 26 (2016), accessed 11 April 2022, <https://doi.org/10.4000/ilcea.3950>, 1–11, 3.

⁴¹ *Uruguay Nunca Más*, 16–32.

and another 26 percent were in the 30–39 age group. Over half were married (56 percent) and 45 percent of those detained had children. A fifth worked in academic professions, 25 percent worked in administration, 17 percent were blue-collar workers and 12 percent were characterized as ‘full-time activists’ (full-time *militantes*). The vast majority of imprisonments took place in the years 1972–1974 (48 percent) and 1975–1977 (32 percent). About a third of those surveyed were detained more than once. The average length of detention was longer for men than for women (Tab. 1).⁴²

Tab. 1: Length of detention of male and female political prisoners.

Length of Detention	Men (percent)	Women (percent)
Up to 2 years	7	16
Between 2–3 years	9	13
Between 3–5 years	24	24
Between 5–8 years	25	20
Between 8–10 years	12	9
Between 10–12 years	9	6
More than 12 years	14	12
Total:	100	100

Source: *Uruguay Nunca Más*, 118, Fig. 27 and 28.

The majority (48 percent) of people were arrested at home or in the private lodgings of third parties (13 percent). However, 23 percent of arrests took place on the street.⁴³ Only a tenth of those arrested came before a (military) judge within two weeks. In 34 percent of cases, it took between one and three months, in a further 30 percent three to six months passed, in 13 percent of the cases it took up to a year before first contact with a judge.⁴⁴ Likewise, in many cases the prisoners had to wait a very long time before they could see a lawyer (only 8 percent saw their lawyer within the first month of detention, 24 percent had to wait between 3 and 6 months, 23 percent more than 6 months and in 18 percent of the cases there was no legal assistance at all).⁴⁵ Almost all detainees were repeatedly subjected to abuse and torture during their detention.⁴⁶

⁴² *Uruguay Nunca Más*, 116–117.

⁴³ *Uruguay Nunca Más*, 121.

⁴⁴ *Uruguay Nunca Más*, 179.

⁴⁵ *Uruguay Nunca Más*, 184.

⁴⁶ *Uruguay Nunca Más*, 152.

1.5.2 The Cases of the *Detenidos Desaparecidos*

Compared to other countries in the region, the absolute number of *Detenidos Desaparecidos*, i.e. the Disappeared, is relatively low. A total of 183 Uruguayans ‘disappeared’ during the dictatorship. Only in 26 cases is it assumed that these people were ‘disappeared’ in Uruguay itself. The vast majority fell into the clutches of the military in Argentina.⁴⁷ It should be noted that the coup in Uruguay took place almost three years before the coup in Argentina. Many Uruguayans therefore fled to Argentina, as it was supposedly safer, yet became victims of the military dictatorship there. In Uruguay, however, six people from other countries also disappeared during the dictatorship.⁴⁸

The vast majority of the 32 people who disappeared in Uruguay were men (27). In comparison to the persecution patterns in other Latin American dictatorships, the following is significant: on the one hand, the people who disappeared in Uruguay were older on average; on the other hand, the range of ages stands out: seven people were younger than 30, 11 were between 30 and 40, three between 40 and 50 and five people were older than 50. The overwhelming majority were politically active. Most belonged to one of the communist groups, and many were unionized. Almost all those who disappeared were close to the *Frente Amplio*.⁴⁹

Similar to Argentina, children in Uruguay who were either arrested with their parents or born while their mothers were in custody were also disappeared. These children were given up for adoption or passed off as their own children by members of the armed forces and security forces. The Historians’ Commission documented the cases of 13 children who had been tracked down; three more children had not (yet) been found. In a fourth case, human remains were discovered.⁵⁰

1.5.3 Other Fatalities

People were also killed in the context of the political violence leading up to the coup, as well as during the dictatorship itself. The Commission of Historians identified 124 people who were murdered or executed immediately before and during the dictatorship.⁵¹ According to the report of the human rights organization SERPAJ, an estimated 33 people died due to torture between 1972 and 1984; eight political prisoners

47 Madres y Familiares de Detenidos Desaparecidos, *A todos ellos*, 5–9.

48 Comisión para la Paz, *Informe Final*, N° 45 und 54.

49 Álvaro Rico, ed., *Investigación histórica sobre Detenidos Desaparecidos: En cumplimiento del artículo 4° de la Ley No. 15.848*, 5 Volumes (Montevideo: IMPO, 2007), vol. 2 (*Datos de las Víctimas: Fichas personales*), 9–431.

50 Larrobla and Larrobla, ‘Las investigaciones históricas,’ 7.

51 Larrobla and Larrobla, ‘Las investigaciones históricas,’ 6.

committed suicide. Around 20 other people died in custody as a result of illness.⁵² In a further 48 cases, people who resisted arrest (some even using weapons) died. The exact circumstances of death are mostly unclear. However, there are indications that some people were deliberately executed or that their deaths were caused by the withholding of emergency medical care.⁵³

Of special significance (also for subsequent transitional justice processes) was the kidnapping and subsequent murder of two prominent Uruguayan parliamentarians in Buenos Aires on 18 May 1976, a few weeks after the military coup in Argentina. After the coup in Uruguay, the *Blanco* MP Héctor Gutiérrez Ruiz and the *Frente Amplio* senator Zelmar Michelini had fled to Buenos Aires, where they were closely involved in coordinating the activities of opposition forces. Both were kidnapped from their homes by heavily-armed civilian task forces consisting of Uruguayans and Argentínians. Several days later, their bodies were found in a car on the outskirts of Buenos Aires, along with those of two other Uruguayans who had been kidnapped in Argentina. The governments of both Argentina and Uruguay tried to attribute responsibility for this attack to ‘subversion’. The murder caused widespread consternation, especially in Uruguay.⁵⁴

This case is important for several reasons: firstly, these were very prominent personalities who were victims of repression. Secondly, the cross-border cooperation of the security forces within the scope of the *Operación Cóndor* became evident. A parliamentary commission was to investigate this case later. Two sons of the murdered senator Zelmar Michelini played and still play a central role in the post-authoritarian reappraisal of human rights violations, both as human rights activists and as members of parliament or senators of the *Frente Amplio*.

1.5.4 Exiles

Thousands of Uruguayans fled due to extensive surveillance, persecution and repression. Many sought protection in other Latin American countries. As well as the immediate neighbouring countries, many Uruguayans fled to Mexico. Many also fled to Spain or France. There was also an active Uruguayan diaspora in other European countries and in North America.⁵⁵ It is estimated that up to 350,000–500,000 Uru-

⁵² *Uruguay Nunca Más*, 256 and 280.

⁵³ *Uruguay Nunca Más*, 284.

⁵⁴ *Uruguay Nunca Más*, 333–336.

⁵⁵ Magdalena Schelotto, ‘La dictadura cívico-militar uruguaya (1973–1985): la construcción de la noción de víctima y la figura del exiliado en el Uruguay post-dictatorial,’ *Questões do tempo presente* (2015), accessed 11 April 2022, <https://journals.openedition.org/nuevomundo/67888>, Vania Markarian, ‘Uruguayan Exiles and Human Rights: From Transnational Activism to Transitional Politics, 1981–1984,’ *Anuario de Estudios Americanos* 64 (2007): 111–140.

guayans had to leave the country for political reasons. With three million inhabitants (1980) this constituted almost a sixth of the total population.⁵⁶

1.5.5 Societal Consequences

The complex and extensive repression and persecution had far-reaching societal consequences. Spying and control led to a culture of fear, reserve, and self-censorship. Some authors speak of the *insilio*, i.e. internal emigration, in contradistinction to *exilio*, exile. Living in fear of becoming the focus of the omnipresent state, many Uruguayans kept silent and tried to lead a life that was as anonymous and as compliant as possible.⁵⁷ This repression had far-reaching effects that extended far beyond the direct victims of violence and persecution.

1.6 Those Responsible

Political power and thus also political responsibility in Uruguay were not restricted to one person or to a clearly defined group of people, as was the case in other dictatorships. Rather, the 1974 military law (*Ley Orgánica Militar*) created institutions that served as centres of power and were staffed by changing personnel, primarily from the ranks of the armed forces and security forces.⁵⁸ Centralized decisions were made by the *Junta de Comandantes en Jefe*, the union of the commanding officers. The executive bodies were the Joint General Staff (*Estado Mayor Conjunto*) and the Information and Defence Service (*Servicio de Información y Defensa*). The National Security Council (COSENA), created in 1973, represented a civil-military body as the country transitioned to dictatorship; it posed so as to maintain the façade of democracy. Later the COSENA, to which civilian ministers still belonged, became the advisory body for the executive branch appointed by the military.⁵⁹ These power structures meant that where true political responsibility during military rule lay remained vague and lacking in transparency.⁶⁰

⁵⁶ Straßner, *Die offenen Wunden Lateinamerikas*, 165.

⁵⁷ Fried, Lessa and Michelini, 'Uruguay,' 157–160.

⁵⁸ Nadia Amesti et al., *La estructura del poder militar durante la dictadura* (Montevideo: Universidad de la República del Uruguay, 2018), accessed 11 April 2022, <https://www.cruzar.edu.uy/wp-content/uploads/2019/02/Estructura.pdf>.

⁵⁹ The COSENA comprised (according to Art. 6 of the Ley Organica Militar of 1974): the President of the Republic as chairman, the ministers of the interior, defence, economy and finance, the foreign minister, the head of the central planning and budgetary authority as well as the Supreme Commanders of the Armed Forces as permanent members. In addition, other functionaries and experts could be called in.

⁶⁰ An overview of the network of different means of repression can be found at, accessed 11 April 2022, <https://sitiosdememoria.uy/organismos-represivos>.

On the journey to dictatorship, however, the central political responsibility lay with the democratically elected President Bordaberry, who had been in office since March 1972. Faced with conflict and social tensions, he assigned the armed forces and security forces an active (domestic) political role. With Decreto No. 464 of 27 June 1973, Bordaberry dissolved the two chambers of parliament and authorized the armed and security forces 'to take all necessary measures to ensure the uninterrupted guarantee of essential public services.' This decision effectively began the military dictatorship, even though he formally remained in presidential office as a civilian until 1976. Bordaberry was sentenced in 2006 to 30 years, imprisonment due to his responsibility for the disappearance and death of several opponents. This he served under house arrest due to his advancing years. In 2010 he was further sentenced to another prison term, as he was held responsible for several murders and kidnappings as well as for the 'attack on the constitution'.⁶¹ As in this prominent case, individual political responsibilities could also be demonstrated in some other cases as well.

Responsibility for specific human rights violations, on the other hand, is more difficult to determine. Repression was mainly carried out by the armed forces and security forces. For example, the majority of arrests were made by the armed forces (Army: 46 percent; Navy: 11 percent; Air Force: two percent). The police accounted for 23 percent of the arrests, and mixed task forces accounted for a further 13 percent.⁶² Interrogations and torture were also carried out by members of the armed forces, but also by the various secret services.

The central institutions of persecution were the *Fuerzas Conjuntas* (mixed task forces consisting of members of the three branches of the armed forces and the police), the DNII (*Dirección Nacional de Información e Inteligencia*) and the military intelligence service SID (*Servicio de Información de Defensa*). Repressive actions were coordinated by the *Organismo Coordinador de Operaciones Antisubversivas* (OCA), which was dependent on the General Staff of the Army.

The problem of allocating responsibility for human rights violations is particularly evident in the case of the Disappeared: the vast majority of Uruguayans did not 'disappear' in the country itself, but in Argentina or in other military dictatorships in the region. They can therefore be regarded as victims of the *Operación Cóndor*, the cross-border cooperation of military dictatorships in South America.⁶³

On a website run by Uruguayan human rights activists with the support of the large victims' organizations *Madres y Familiares de Detenidos Desaparecidos* and

61 Walter de León Orpi, 'Juan María Bordaberry: el dictador latinoamericano condenado por delitos de lesa humanidad,' in *Luchas contra la impunidad: Uruguay 1985–2011*, ed. Gabriela Fried and Francesca Lessa (Montevideo: Trilce, 2011), 175–187.

62 *Uruguay Nunca Más*, 121.

63 Cunha, *Operación Cóndor*; Francesca Lessa, *Justice without Borders: Accountability for Plan Condor Crimes in South America* (Oxford: University of Oxford, Latin American Centre, 2016), accessed 11 April 2022, https://www.lac.ox.ac.uk/sites/default/files/lac/documents/media/policy_brief_eng.pdf.

CRYSol, there is a list of people involved in the repression who are under investigation.⁶⁴ This list is neither exhaustive nor representative. However, it does allow conclusions to be drawn about responsibilities for human rights violations. The vast majority of the 54 people listed (as of December 2020) were members of the armed forces and security forces, especially the army. Quite a few people were (additionally) employees of the various secret services. The list also includes four civilians: two former presidents (one of whom was also an army general), a minister and an employee of the Foreign Ministry and the diplomatic corps. Of the 54 people mentioned, 22 were convicted, and in 25 cases the proceedings have not yet been concluded. Four people are on the run.

1.7 Places of Persecution

Control, persecution and oppression were everywhere during the dictatorship. Uruguay was considered the largest prison in South America.⁶⁵ The regional focus of the persecution was in Montevideo and the surrounding area. More than half of all Uruguayans lived there. The two main prisons were also located near the capital; *Libertad* and *Punta Rieles*. *Libertad* was under the command of the army, although members of other branches of the armed forces and the police were also active there. The prison was built in 1972 as a maximum security prison for political prisoners. Around 3,000 people were imprisoned there up until 1985. It currently continues to serve as a maximum security prison. *Punta Rieles* became a prison for female political prisoners in 1973. By 1985 around 700 women, some with their children, were imprisoned there. This prison was also subject to the armed forces. In Paso de los Torros further inland there was another women's prison run by the armed forces, in which around 160 women were detained.⁶⁶ In addition to these prisons, there were 16 other prisons across the country that held political prisoners (three of these for minors). As well as these formal prisons, some of which were located in the grounds of army barracks, there were 77 detention and torture centres (27 of which were secret *Centros clandestinos de detención y tortura*).⁶⁷

Most Uruguayans who fell victim to the *desaparición forzada*, the 'enforced disappearances', disappeared in Argentina, especially in the greater Buenos Aires area. One of the emblematic places here was the *Automorores Orletti* Secret Detention and

⁶⁴ Accessed 11 April 2022, <https://sitiosdememoria.uy/represores>.

⁶⁵ Fried, Lessa and Michelini, 'Uruguay,' 159.

⁶⁶ For more information on sex- and gender-specific dimensions, see *Las Laurencias: Violencia sexual y de género en el terrorismo de Estado uruguayo*, ed. Soledad González Baica and Mariana Risso Fernández (Montevideo: Trilce, 2012); Alonso, *La prisión*, 53–73.

⁶⁷ Accessed 11 April 2022, <https://sitiosdememoria.uy/tabla>.

Torture Centre. At least 64 Uruguayans were detained and tortured there in 1976; eight of them are still considered 'disappeared', while another was murdered.⁶⁸

1.8 The End of the Authoritarian Regime and Transition to Democracy

Since the armed forces did not historically play an active domestic political role in the country's political tradition, the Uruguayan military always attempted to convey, internally and externally, the image of civil-military cooperation which was only necessary in the short-term to stabilize the country. They also tried, wherever possible, to create the impression that government action was based on law and order. The timetable in which the government outlined steps towards a return to a 'protected' democracy in mid-1977 should also be seen in this context. Among other things, a referendum on constitutional reform was planned for November 1980, by which the armed forces wanted to formalize and establish their role in politics.⁶⁹

The military felt safe: for years they had banned all opposition activities, and the media were strictly censored. A few months earlier, using a similar process, the Chilean military had succeeded in ratifying a constitution that was tailored to the needs of the dictator Augusto Pinochet and that was to shape politics in Chile for over 40 years (another referendum held in October 2020 voted to draw up a new constitution).

But the calculations of the Uruguayan military, who felt encouraged by the proceedings in Chile, did not work out as planned: with a turnout of around 87 percent, only 42.8 percent approved the new constitution.⁷⁰ The plan to consolidate the dictatorship and give it a solid basis of legitimacy failed. Thus began the five-year transition to democracy: at the end of 1982, three parties (*Colorados*, *Blancos* and *Unión Cívica*) were allowed to hold internal party elections to fill the governing bodies. These should then serve as negotiating partners for the transition to democracy. At the start of 1983, the parties formed an inter-party coalition; the *Interpartidaria* and *Multipartidaria* alliance, in order to improve their position with regard to the military in the negotiations that took place from mid-1983.

When the negotiations stalled and threatened to fail, massive protests broke out. In September 1983 around 80,000 workers and students took part in a mass demonstration in Montevideo.⁷¹ In November, around 400,000 demonstrators gathered at a

⁶⁸ Fried, Lessa and Michelini, 'Uruguay,' 159, 186–188.

⁶⁹ Weinstein, *Uruguay*, 74.

⁷⁰ Jorge Leonel Marius and Juan Francisco Bacigalupe, *Sistema Electoral y Elecciones Uruguayas 1925–1998*, Montevideo: KAS, 1998), 82, Tab. 04.07.08.

⁷¹ Ronald H. McDonald, 'Redemocratization in Uruguay,' in *Liberalization and Redemocratization in Latin America*, ed. George A. Lopez and Michael Stohl (New York, Westport and London: Greenwood Press, 1987), 173–189, 186.

rally in the capital. In January 1984 a general strike paralysed the country.⁷² Not least because of massive public pressure, the military agreed to new negotiations with the parties in June 1984. The *Colorado* politician Julio María Sanguinetti took the central role in these negotiations, which ended on 3 August 1984 in the so-called Pact of the Naval Club.

It was agreed, among other things, that elections should take place on 25 November 1984. Part of the compromise, however, was that some prominent politicians were not allowed to stand for election. The question of human rights violations was left out of the negotiations. However, there are good reasons to believe that (implicit) agreements were reached on this issue.⁷³ The military also saw no need to enact an amnesty law for crimes committed during the dictatorship.

The results of the November 1984 elections were remarkably similar to those of the last democratic election in 1971: The *Colorados* received 41.2 percent (1971: 41 percent), the *Blancos* 35 percent (40.2 percent) and the *Frente Amplio* 21.2 percent (18.3 percent).⁷⁴ On 1 March 1985, the 49-year-old lawyer Julio María Sanguinetti (*Partido Colorado*) took over the highest office of the state for the next five years.

2 Transitional Justice

Almost all of the factors that are raised in political science research on transitional justice⁷⁵ as inhibiting an active confrontation with the past applied to Uruguay: the military transferred power from a position of strength – not because of a regime collapse, but as the result of lengthy negotiations with the opposition movement. Even after they made a pact to hand over power, the armed forces retained their central role in politics during the (post-)transition period. The appointment of a general as defence minister ensured that their interests were represented at a governmental level. The democratic elites felt themselves bound by their commitments to the outgoing rulers, were primarily interested in a tension-free consolidation of democracy and did not want to strain relations with the army.

Against this backdrop in particular, how Uruguay has dealt with the dictatorship's human rights violations presents an interesting case. The first democratic governments were not particularly interested in giving the issue of human rights much airtime and therefore quickly tried to find a solution through amnesties. Resistance from civil society culminated in a referendum, in keeping with the Uruguayan polit-

⁷² Alexandra Barahona de Brito, *Human Rights and Democratization in Latin America: Uruguay and Chile* (Oxford: Oxford UP, 1997), 70 f.

⁷³ Weschler, *A Miracle, a Universe*, 155–158.

⁷⁴ Dieter Nohlen, 'Uruguay,' in *Elections in the Americas: A Data Handbook*, Vol. II, ed. Dieter Nohlen (Oxford: Oxford UP, 2005), 487–534, 506, Tab. 2.7.1.

⁷⁵ Nohlen, 'Uruguay,' 39 ff.

ical tradition. Amnesty for the military was confirmed by a very narrow margin, making it politically impossible to come to terms with the past for years.

Uruguay is especially interesting because, after 15 years of societal silence, since the second half of the 1990s, the past has again become the subject of public and political debate. A truth commission was set up. After 21 years, the first court judgments were pronounced in Uruguay for the crimes carried out by the dictatorship.⁷⁶ In 2020, 35 years after the return to democracy, the Uruguayan judiciary had convicted almost two dozen people for human rights violations, while proceedings are still ongoing in other cases.⁷⁷

2.1 Political and Institutional Changes

At the negotiations that took place at the *Club Naval* in Montevideo, in which the military and opposition negotiators agreed on the steps to take toward a return to democracy, it was agreed that some prominent politicians would be deprived of the right to stand as candidates. The military wanted to prevent political figureheads like Wilson Ferreira Aldunate (*Partido Nacional*), Jorge Batlle (*Colorado*) and Liber Seregni (*Frente Amplio*) from running for the presidency. The winner of the November 1984 election was the politician Julio María Sanguinetti of the *Colorado* Party. His presidency started in March 1985.

With the return to democracy, the political parties were also able to restart their activities without restriction. Parliament resumed its work on 15 February 1985, almost twelve years after its dissolution by President Bordaberry; President Sanguinetti took office on 1 March. During the election campaign, he had spoken of the fact that the military should be held accountable in court.⁷⁸ In his inaugural address, however, he did not mention human rights violations at all. David Pion-Berlin aptly describes him when he writes:

If there is anything about Sanguinetti's character that could explain his decision, it is his pragmatism. Unlike Alfonsín and Aylwin [the presidents of Argentina and Chile] who both had moral agendas to fulfil, Sanguinetti did not. He was fully prepared to suspend principles in order to achieve desired ends.⁷⁹

⁷⁶ A chronological overview sorted by year is provided by Jimena Alonso, Fabiana Larrobla and Mariana Risso, *Avanzar a tientas: Cronología de las luchas por verdad y justicia 1985–2015* (Montevideo 2016).

⁷⁷ Accessed 11 April 2022, <https://sitiosdememoria.uy/represores>.

⁷⁸ Madres y Familiares de Detenidos Desaparecidos, *El Referendum desde Familiares* (Montevideo: MFDD, 1990), 23.

⁷⁹ David Pion-Berlin, 'To Prosecute or to Pardon? Human Rights Decisions in the Latin American Southern Cone,' *Human Rights Quarterly* 16/1 (1994): 105–130, 118.

For him, the human rights violations were primarily a political problem that had to be worked on and solved, not a moral dilemma. His primary concern was the country's political stability. In his inaugural address he said: 'My greatest goal is to hand over the office to the new constitutionally elected president on 1 March 1990.'⁸⁰

This statement must also be viewed against the backdrop that the armed forces did not have to accept any fundamental structural or personnel changes due to the transition pact and that they thus continued to be decisive actors in the post-authoritarian power game. Even if there were no open threats of coups or military rebellions, as was the case in neighbouring Argentina, it was implicitly clear that governing against the interests of the armed forces would involve high political risks. Sanguinetti appointed former General Hugo Medina, who had represented the armed forces in the *Club Naval* negotiations, as Minister of Defence. This ensured that military interests were always heard at the cabinet table.

Constitutional changes or far-reaching legislative reforms were not necessary because the military had not succeeded in changing the constitution in their favour. The succeeding democratic governments were able to build on the democratic and constitutional tradition of the country. The judges in the highest courts were changed, but no comprehensive judicial reforms were carried out. There was also no urgent need, since the military had not abused the judiciary, as was the case in Argentina and Chile, for example. Rather, the courts could act with relative autonomy even during military rule.⁸¹

2.2 Prosecution

After the return to democracy, there were neither judicial nor practical obstacles to the criminal justice process: there was no amnesty law, the judges at the highest courts had been replaced and the judiciary was functional. However, there were political reasons why there were still no actual prosecutions.⁸²

2.2.1 The Release of Political Prisoners from Prison

Since the Uruguayan military had mainly relied on imprisonment as a method of political persecution, after the end of the dictatorship, the primary demand was for the

⁸⁰ Julio M. Sanguinetti, quoted in Benjamín Nahum, *Manual de Historia del Uruguay, Tomo II: 1903–2000* (Montevideo: Banda Oriental, 2004), 365.

⁸¹ Elin Skaar, 'Un análisis de las reformas judiciales de Argentina, Chile y Uruguay,' *América Latina Hoy* 34 (2003): 147–186, 167–178.

⁸² Elin Skaar, 'Uruguay: Reconstructing peace and democracy through transitional justice,' in *After Violence: Transitional Justice, Peace, and Democracy*, eds. Elin Skaar, Camila Gianella and Trine Eide (London and New York: Routledge, 2015), 67–95.

release of political prisoners. At the very first session of the newly-elected parliament, even before President Sanguinetti officially took office, a corresponding legal solution was debated. They disputed whether all prisoners should be given an amnesty or only those who had not committed any '*hechos de sangre*', i.e. bloody acts of violence.⁸³

After some controversy, the parliamentarians were able to agree on a regulation that was passed on 8 March 1985, one week after Sanguinetti took office and three weeks after the opening of the parliament, which became the *Ley de Pacificación Nacional* (National Pacification Act, Ley No. 15.737).⁸⁴ This compromise solution provided for the immediate release of all political prisoners, with the exception of those detained for homicides. On this basis, almost 200 people were given an amnesty and were released within two days of the law being passed. The cases of the remaining prisoners were to be reviewed within 120 days. In the case of unjustified sentences, release was immediate. In the other cases, each day of imprisonment previously served was counted as three days, so that these prisoners were also released de facto after their cases had been reviewed, even if their previous convictions were still on record. Existing arrest warrants and restrictions on entry into the country were also lifted. The law explicitly excluded crimes committed by members of the armed forces and security forces (Art. 5). The last political prisoners were released within a few weeks.⁸⁵ In a certain sense, the opening of the prisons symbolized the end of the dictatorship. One of the most important demands of the human rights movement and of civil society seemed to be fulfilled.

2.2.2 Criminal Proceedings against Members of the Armed Forces

The freed political prisoners reported on their experiences in the press, which was now free from censorship. This cast light on the system of human rights violations and state-controlled repression. As a result, calls for these crimes not to go unpunished grew louder. The Uruguayans also looked to the other bank of the Río de la Plata, where the *junta* trials were taking place in Buenos Aires. In December 1985, former Argentinian *junta* members were sentenced to life or long periods of imprisonment for murder, torture, deprivation of liberty, robbery and coercion. In April 1985, the organization *Madres y Familiares de Uruguayos Detenidos Desaparecidos* (MFDD, Mothers and Relatives of the Uruguayan Disappeared), together with the

⁸³ For the prehistory of the law, see Barahona de Brito, *Human Rights and Democratization*, 27 ff.

⁸⁴ This law, as well as all other laws mentioned in this study, are available online and can be easily found by quoting the law number with the addition 'Uruguay'. Since the URLs under which the laws can be found change frequently, the exact addresses are not given.

⁸⁵ Louise Mallinder, *Uruguay's Evolving Experience of Amnesty and Civil Society's Response* (Working Paper No. 4 from Beyond Legalism: Amnesties, Transition and Conflict Transformation) (Belfast: Institute of Criminology and Criminal Justice, Queen's University, 2009), 34.

human rights organizations SERPAJ and IELSUR (*Instituto de Estudios Legales y Sociales del Uruguay*, Uruguayan Institute for Legal and Social Studies) in Montevideo, filed the first lawsuit against the Uruguayan military for the disappearance of 36 Uruguayans (31 in Argentina and five in Uruguay). This was the first lawsuit of its kind in Uruguay and the start of the struggle to address the human rights violations through criminal proceedings. By the time the Amnesty Act (*Ley de Caducidad*) was passed at the end of 1986, the number of lawsuits had risen to over 700.⁸⁶

The Sanguinetti government reacted to the complaints with a lack of understanding. Sanguinetti argued that it was inconsistent to provide an amnesty for political prisoners and then bring criminal proceedings against members of the armed forces and security forces.⁸⁷

Since the accused were members of the armed forces, the military justice system claimed jurisdiction. Sanguinetti agreed to this demand. The defence minister supported those officers who refused to appear in court.⁸⁸ Even if all proceedings were discontinued, this development still caused unrest among the troops.

In June 1986, when the Supreme Court of Justice gave civil courts jurisdiction over human rights claims, Sanguinetti criticized the decision, accusing the civil courts of bias and thus questioning the legitimacy and independence of the judiciary. In the context of the debates over court summons for the military and questions over jurisdiction, calls for a political solution grew louder. The military demanded an amnesty similar to that of the political prisoners. They found support from the government for this demand. A broad political debate ensued, in which the opposition leaders of the two opposition parties Wilson Ferreira Aldunate (*Blancos*) and Líber Seregni (*Frente Amplio*) no longer ruled out an amnesty *after* the facts had been clarified. A certain consensus based on responsible ethics was emerging among the parties: in the service of democratic stability, comprehensive prosecution should be avoided.

2.2.3 The *Ley de Caducidad* – The Amnesty Law for Members of the Military

(i) The search for a political solution

The debates about a political solution were conducted in the context of various tensions: the military made it clear that they were unwilling to appear in civil courts. They could count on the backing of the government, which in turn was accused of obstructing the work of the proper judiciary and thus of endangering the rule of law. The defence minister had to defend himself against attacks from the ranks of the armed forces, who accused him of inappropriately advocating the interests of

⁸⁶ Skaar, 'Uruguay,' 72.

⁸⁷ Straßner, *Die offenen Wunden Lateinamerikas*, 175 f.

⁸⁸ Barahona de Brito, *Human Rights and Democratization*, 130 ff.

the troops. There was always the implicit threat that the high-ranking generals might refuse to obey him.⁸⁹

Although Sanguinetti and his *Colorado* party advocated an amnesty similar to that for political prisoners, there was no unity within the opposition parties (*Blancos* and *Frente Amplio*). Although they saw the need for a political solution, they knew that some parliamentarians as well as the grassroots members of the party had serious reservations about using an amnesty as the solution.

For months, various bills were discussed and rejected in heated parliamentary debates.⁹⁰ On 22 December 1986, two days before Christmas, the ruling *Colorados* and the opposition *Partido Nacional* voted for the so-called *Ley de Caducidad de la Pretensión Punitiva del Estado* (Law of Expiry of the Punitive Claim of the State, Ley No. 15.848) and found a political solution.⁹¹

(ii) The *Ley de Caducidad* in practice

In its first article, the law refers explicitly to the *Club Naval* negotiations, during which the framework conditions for a return to democracy were established in 1984. However, to this day, the specific content of these agreements has never been made public. Article 1 of the *Ley de Caducidad* states that offences committed by members of the armed forces and security forces for political reasons or while carrying out official duties will not be prosecuted.

The amnesty mechanism is regulated in Art. 3. The investigating judge must hand over the relevant documents to the executive in the event of questionable crimes committed by members of the military or police, so that the president can decide within 30 days whether the offences fall under the provisions of Art. 1 of the amnesty law. This constitutionally questionable mechanism was strategically an extremely clever move: the final decision about a possible criminal prosecution was thus in the hands of the executive. The judiciary could only become active in human rights trials if the president personally approved it. It can safely be assumed that developments in Argentina were being closely monitored while the law was being drafted. There, attempts by the government to limit the number of trials against military personnel initially failed because of the self-confident and autonomous judiciary. With the amnesty mechanism, as laid down in Article 3 of the *Ley de Caducidad*, the executive had control of the judiciary in these politically sensitive issues.

At the same time, this regulation could serve as a bargaining chip for the president against the armed forces. Whether they had to answer before the courts de-

⁸⁹ Raúl Olivera Alfaro, 'Memoria, verdad y justicia en Uruguay: la gestión del pasado en un escenario de luces y sombras,' *ILCEA – Revue de l'Institut des langues et cultures d'Europe, Amérique, Afrique, Asie et Australie* 26 (2016), accessed 11 April 2022, <https://journals.openedition.org/ilcea/3905>, 1–22, 4–8.

⁹⁰ Straßner, *Die offenen Wunden Lateinamerikas*, 176f.

⁹¹ Barahona de Brito, *Human Rights and Democratization*, 132–145.

pended on his benevolence and upon his personal decision. The presidents therefore had an efficient means to exert pressure that could also be used to discipline the armed forces if necessary. They were the personal guarantors that no member of the military would be prosecuted.

The regulation provided for in Article 4 was of central importance for the further debates around clarifying the fate of the Disappeared. Cases that dealt with ‘people presumed disappeared’ had to be passed from the respective judge to the president, along with all supporting documentation; the president then had to take ‘immediate action to clear up these cases’.

Just after the law was passed, President Sanguinetti ended all live proceedings by ruling that they were covered by the amnesty regime. In order to meet the requirements of Article 4, he commissioned the military prosecutor to investigate the cases of the ‘presumed disappeared’. However, the armed forces claimed they had no information. In no case could it be clarified what had happened to the person who had disappeared and who was involved in the operations or who was responsible. The investigations were all discontinued with no results.⁹²

(iii) The campaign for a referendum to abolish the *Ley de Caducidad*

The human rights movement and the victims of dictatorship did not want to accept this amnesty law. On the day the *Ley de Caducidad* was adopted, the MFDD declared: ‘There is no law that can be used to order to forget them: neither the Disappeared, nor the tortured, nor the dead.’⁹³ The human rights movement had gained political experience by taking part in the debates about the amnesty law; it had succeeded in creating a broad base of support for its cause.

Along with other civil society actors, the *Comisión Pro Referendum* was founded shortly after the law was passed with the aim of overriding the *Ley de Caducidad* through a referendum. The constitution (Art. 79) provides for this plebiscitary element if, within one year, 25 percent of those eligible to vote express their support for a referendum through their signatures. The collection of the required signatures represented a social mobilization that Uruguay had never seen before: groups and committees were organized across the country that went door to door to convince the citizens of the need for a referendum. Students, church groups, trade unions, members of housing cooperatives, civic and professional associations and political parties took part in the collection of signatures. Contrary to the intentions of the government and the armed forces to quickly close the pages on this dark chapter of the dictatorship, the human rights movement managed to have this topic dominate the agenda for months.

⁹² Straßner, *Die offenen Wunden Lateinamerikas*, 176 ff.

⁹³ Declaration of the *Madres y Familiares de Uruguayos Detenidos y Desaparecidos*, 22. December 1986, published in *Madres y Familiares de Detenidos Desaparecidos, El Referendum desde Familiares*, 10.

On 17 December 1987, almost a year after the adoption of the *Ley de Caducidad*, 643,702 signatures were submitted to the relevant authority – 90,000 more than required. In January 1988, the counting and verification of the signatures began.⁹⁴ After the majority of the signatures had already been checked, the validity criteria were changed so that numerous signatures were subsequently rendered invalid. The *Comisión Pro Referendum* protested unsuccessfully against this government U-turn, which was attributed to pressure from the army. After eleven months, the responsible electoral authority finally announced that 22,956 signatures were missing to prove the required support from 25 percent of those eligible to vote. However, 36,834 signatures were considered ‘open’ and could still be verified between 17–19 December 1987. The *Comisión Pro Referendum* started a second campaign to find the people concerned and to get them to confirm their signatures. They succeeded at this seemingly impossible task: on 19 December, the path to the referendum on the amnesty law was now clear. The human rights movement had collected 216 more signatures than needed.⁹⁵

The referendum took place on 16 April 1989. The army performed a large-scale military exercise in March; rumours of coups did the rounds, which seemed all the more threatening against the background of the military uprisings in neighbouring Argentina. The government and leading *Blanco* politicians spoke out in favour of maintaining the amnesty law. They said it was important to look ahead and face the challenges of the future instead of remaining trapped in the past. For its part, the human rights movement tried to make clear the consequences of the amnesty for the country and for the victims of the dictatorship. The human rights movement ran their campaign under the motto *Para que el Pueblo decida* – ‘So that the people may decide’. And the people decided: with a turnout of 82.4 percent, 55.44 percent of the population spoke out in favour of retaining the *Ley de Caducidad* in a climate marked by fear.

(iv) Consequences of the referendum confirming the *Ley de Caducidad*

The result had far-reaching consequences for the human rights movement. The amnesty law had now been given the highest possible democratic legitimation and – despite the narrow outcome – had to be regarded as a direct expression of the will of the people. The remaining scope of the human rights movement had thus been reduced to a minimum. For years the criminal investigation had remained at a standstill. In general, the issue of human rights violations seemed to have disap-

⁹⁴ Servicio Paz y Justicia, Uruguay, *Informe: Derechos humanos en Uruguay/1988* (Montevideo: SERPAJ, 1988), 35ff.

⁹⁵ Michael Seligmann, ‘Uruguay: Volksbewegung und Parlamentarismus,’ in *Vom Elend der Metropolen*, ed. Dietmar Dirmoser et al. (Hamburg: Junius, 1990), 269–281, 269–272.

peared not only from the political but also from the public agenda as a result of this referendum.⁹⁶

Even recourse to internationally binding standards of human rights did not change anything: the government was able to reject both an admonition by the Organization of American States in 1991 and the criticism of the *Comisión Interamericana de Derechos Humanos* in 1992 as interference in internal affairs. The *Ley de Caducidad* was – the government stated – not only established democratically, but was also confirmed by a decision of the Constitutional Court and a referendum.⁹⁷

Since the procedural basis of the *Ley de Caducidad* meant that the decision as to whether a possible crime was covered by the amnesty law was the responsibility of the executive, there were no notable criminal proceedings during the time of the centre-right governments that ruled the country from the return to democracy. A change only became apparent when the *Frente Amplio* with Tabaré Vázquez took over government in 2005. However, it took numerous political and legal efforts even under the subsequent centre-left governments before prosecution became possible and the *Ley de Caducidad* finally lost its effectiveness (see 2.2.5).

The human rights and victim groups had accepted the outcome of the referendum. They deeply regretted that it meant that crimes that Uruguay had never previously experienced in its history would go unpunished.⁹⁸ Nevertheless, along with their lawyers, in the years after the 1989 referendum, despite the existing amnesty regulation, they at least tried to advance the investigation and clarification of human rights violations and to use (and expand) the limited scope that still remained despite the amnesty.

⁹⁶ A clear sign of this is also the amount of attention that this topic merits in SERPAJ's annual human rights report. The report was first published in 1988. The page breakdown according to the years of each president results in the following distribution: Sanguinetti I (1985–89): 10.7 percent, Lacalle (1990–95): 3.3 percent, Sanguinetti II (1995–2000): 7.5 percent, Batlle (2000–05): 30.3 percent (my own calculations based on the annual reports from 1988 to 2004. The data on Sanguinetti I refers to the reports from 1988 and 1989).

⁹⁷ After the *Comisión Interamericana de Derechos Humanos* had received several complaints against the Uruguayan state between 1987 and 1989, the Inter-American Human Rights Commission sharply criticized it in its report 29/92. The report, which received little attention in Uruguay, stated that Uruguay had violated its international obligations with the *Ley de Caducidad*, since it was incompatible with Art. XVIII (Right to Justice) of the *Declaración Americana de los Derechos y Deberes del Hombre* and Articles 1, 8 and 25 of the *Declaración Americana sobre Derechos Humanos*. Uruguay was asked to adequately compensate the victims, investigate the cases and clarify individual responsibilities. The investigations carried out by the military prosecutor were viewed as insufficient.

⁹⁸ Straßner, *Die offenen Wunden Lateinamerikas*, 184 f.

2.2.4 The search for Truth (and Justice) in the Context of Impunity

After the human rights movement and its civil society allies had invested all their energy and resources in the campaign for the referendum, it took some time after the defeat before they were able to open up new perspectives and develop new strategies. Although they disagreed with the content and despite their doubts about the moral legitimacy of the amnesty law, they accepted the outcome of the referendum as an expression of the will of the people. Instead of continuing to fight against this law, they now advocated that it be implemented not only partially (in the sense of the amnesty of Art. 1) but comprehensively, i. e. that the investigations provided for in Art. 4 should be carried out conscientiously. At the same time, the lawyers tried, despite the amnesty regulation, to continue dealing with the past through judicial processes.

(i) Civil proceedings as a substitute for criminal proceedings

Since the *Ley de Caducidad* closed down all ways of using criminal legal proceedings to clarify human rights violations and obtain recognition of these crimes by the state, lawyers from the IELSUR looked for other options on behalf of the victims. They initiated civil proceedings against the Uruguayan state and demanded compensation payments, as the state had responsibility under civil law for crimes committed by members of the armed forces, the secret service and the police. In contrast to criminal law, the judges in the civil chambers do not have extensive investigative powers, so that the burden of proof rested on the injured parties.

The first of such proceedings were initiated during Sanguinetti's time in power (1985–1990). The Interior and Defence Ministries, against whom the lawsuits were directed, lodged numerous appeals. Nevertheless, during the presidency of Luis Alberto Lacalle (1990–1995) it became apparent that the court decisions would not go in the state's favour.⁹⁹ The idea that military personnel – despite the amnesty law – would have to testify in court or that site inspections would take place on military grounds created unrest in the ranks of the armed forces and caused the government to make out-of-court settlements with the victims. These out-of-court settlements meant that the state, which agreed to make payments, recognized the crimes and assumed responsibility for them. Around 2.5 million US dollars in compensation was distributed among the plaintiffs, on whose behalf the IELSUR lawyers had acted. Even before the settlement negotiations were concluded, judgments were passed against the Uruguayan state in two cases, so that the responsibility of the state was confirmed not only by the state's own admission, but also by court decisions.

The human rights movement was therefore able to use civil law procedures to persuade the state to recognize those offences that had been shelved and partially

⁹⁹ Jorge Eduardo Pan, 'Una brecha a la impunidad,' *Revista de IELSUR* 9 (1994): 7–18, 15 ff.

denied in the course of the criminal investigations under Article 4 of the *Ley de Caducidad*, following the investigations by the military prosecutor's office and with the backing of the government.

(ii) *Operación Zanahoria*: criminal proceedings for disturbing the peace of the dead

Another attempt to make judicial inquiries into the fate of the Disappeared despite the existing amnesty law was in connection with *Operación Zanahoria* ('Operation Carrot'). The *Frente Amplio* Senator Rafael Michelini, one of the sons of Senator Zelmor Michelini (also *Frente Amplio*), who was abducted and killed in Argentina in 1976, had learned in talks of an operation in which, during the transition period between dictatorship and democracy, the remains of people buried on a military site were exhumed in order to destroy them or to bury them again in another location. The aim was to prevent the bodies of the alleged Disappeared from being discovered.

Senator Michelini therefore filed a criminal complaint in March 1997 for disturbing the peace of the dead. He called on the judiciary to clarify the facts and investigate the whereabouts of the bodies. He also requested clarification on the question of whether the exhumations took place after 1 March 1985, in which case they would not have been covered by the amnesty law.¹⁰⁰

After the lawsuit was, surprisingly, initially accepted, there were a number of government interventions, which ultimately led to the case being shelved.¹⁰¹ Even if the plaintiffs had expected this outcome from the start, this legal manoeuvre served, on the one hand, to increase the pressure on the government, while, on the other hand, it helped to keep the issue in the public consciousness. This criminal case was also an initiative that initially followed political and strategic considerations. In the context of this case, it involved engaged discussions about the establishment of a truth commission to clarify the fate of the Disappeared.

In the course of time, investigations took place into *Operación Zanahoria* and later excavations were carried out by forensic archaeologists and anthropologists. It is believed that these are the bodies of 23 people who were abducted in Argentina and brought on a plane together to Uruguay, where they were murdered. The bodies were initially buried on the site of a paratrooper battalion.¹⁰² In this case, which con-

¹⁰⁰ Accessed 11 April 2022, <https://www.observatorioluzibarburu.org/causas/142>.

¹⁰¹ Mallinder, *Uruguay's Evolving Experience*, 61f.; Straßner, *Die offenen Wunden Lateinamerikas*, 192.

¹⁰² Grupo de Investigación en Antropología Forense (GIAF), *Investigaciones antropológicas sobre Detenidos Desaparecidos en la última dictadura cívico-militar. Informe de actividades año 2011–2012*, (Montevideo: GIAF 2012), 22ff.; José López Mazz, 'The concealment of bodies during the military dictatorship in Uruguay (1973–84)', in *Human remains and identification: Mass violence, genocide, and the 'forensic turn'*, ed. Elisabeth Anstett and Jean-Marc Dreyfus (Manchester: Manchester University Press, 2017), 83–97, 88f.

tinues to move the Uruguayan public to this day, no legal sentences were passed. The accusation was repeatedly made that Julio María Sanguinetti had been informed about the exhumations during his first term as president and had, in fact, supported them.

(iii) The first prison sentence for human rights violations: the case of Elena Quinteros

In October 2002, a prison sentence was issued for the first time for human rights violations during the dictatorship. The former Foreign Minister Juan Carlos Blanco was convicted. As a civilian, he was not protected by the *Ley de Caducidad*.¹⁰³ He was sentenced for assisting in the kidnapping of the teacher Elena Quinteros, who was active in the left-wing *Partido por la Victoria del Pueblo* and was arrested in Montevideo in July 1976.¹⁰⁴ She was able to convince the military that she was planning to meet a *compañero* who was also on the wanted list, and she offered to lead the military to this meeting point in order to enable the wanted person to be arrested. She chose a location for this fictional meeting near the Venezuelan embassy.

Quinteros managed to reach the embassy premises in order to claim political asylum. The agents followed her onto the embassy grounds, where there was a struggle with embassy staff. The agents dragged Quinteros into a car. Since that point she has been considered one of the Disappeared. The government of Venezuela protested against this violation of their national territory and demanded the return of the woman, but the Uruguayan government denied her arrest. Until the end of the dictatorship, diplomatic relations between the two countries were fractured.

Because of this international dimension, Sanguinetti commissioned the Ministry of Foreign Affairs to investigate this case in his first term (rather than the military prosecutor, as in the other cases). The conclusions of these investigations were kept secret, yet fell by chance in 1999 into the hands of human rights activist Raúl Olivera, a party colleague of the missing Elena Quinteros. The documents included handwritten minutes of a meeting that dealt with the future fate of Quinteros, who had been abducted from the Venezuelan embassy. Using graphological analysis, it was proven that the foreign minister responsible at the time, Juan Carlos Blanco, was involved in the meeting. The mother of the Disappeared filed a criminal complaint against the civilian Blanco in 2000. The court agreed with the prosecution, in-

¹⁰³ Raúl Olivera and Sara Méndez, *Secuestro en la embajada: El caso de la maestra Elena Quinteros*, 2da. ed. (Montevideo: Fundación Editorial El Perro y la Rana, 2004), 285–291.

¹⁰⁴ Pablo Chargoña, 'Caso Elena Quinteros: El ex canciller de la dictadura y el Batallón 13 en el centro de las investigaciones,' in *Derechos Humanos en el Uruguay: Informe 2004* (Montevideo: SERPAJ, 2004), 119–125.

interpreting the disappearance of Elena Quinteros as an ongoing kidnapping. Blanco was sentenced to prison as an accomplice.¹⁰⁵

A grotesque turn of events came about after the truth commission set up by President Batlle in 2000 came to the general conclusion that all of the Disappeared were dead. Blanco's lawyers applied for his release from prison, as the verdict for aiding and abetting kidnapping and deprivation of liberty was therefore rendered invalid. The court followed this line of reasoning. Another complaint for complicity to murder was filed. Finally, in 2010, Juan Carlos Blanco was sentenced to 20 years in prison for an accessory to the murder and his involvement in the disappearance of Elena Quinteros, whose remains have not yet been found.¹⁰⁶

(iv) Further progress in criminal justice

The examples presented here represent events that had an impact on the public perception of the crimes of the dictatorship. Maintaining the *impunidad* (impunity) came with increasing political costs. International developments also impacted the Uruguayan way of coming to terms with the past: in particular, the imprisonment of the Chilean ex-dictator Augusto Pinochet in London (1999) and the debates about the amnesty laws in Argentina were followed with great interest in Uruguay.

In this changed political climate, the human rights movement's lawyers succeeded time and again in getting the judiciary to act, even though it would take years before judgements were pronounced. The plaintiffs pursued different strategies in order to initiate judicial investigations despite the validity of the *Ley de Caducidad*:

- They formulated lawsuits against civilians who could not invoke the amnesty law.
- They brought complaints about offences committed outside the time period covered by the *Ley de Caducidad*.
- They brought charges that were allegedly economically motivated.
- They also brought charges about crimes that were *not* committed due to a political motivation or in fulfilment of an order and could therefore be regarded as 'normal' crimes that were therefore not covered by the amnesty law.
- In cases of disappeared persons, they interpreted enforced disappearance as kidnapping that continues to this day, a crime that continues beyond the period of validity of the *Ley de Caducidad* and therefore does not fall under the amnesty.

105 Pablo Chargoña, 'Avances, retrocesos y desafíos en la lucha judicial contra la impunidad,' in *Luchas contra la impunidad: Uruguay 1985–2011*, ed. Gabriela Fried and Francesca Lessa (Montevideo: Trilce, 2011), 163–174, 165 f.

106 Secretaría de Derechos Humanos para el pasado reciente, Ficha perteneciente a QUINTEROS ALMEIDA, Elena Cándida, accessed 11 April 2022, <https://www.gub.uy/secretaria-derechos-humanos-pasado-reciente/comunicacion/publicaciones/ficha-perteneciente-quinteros-almeida-elena-candida>.

- Finally, they argued that the human rights violations of the dictatorship were crimes against humanity, which, according to international legal norms that are also binding for Uruguay, cannot be covered by amnesty.

Even if these trials did not initially lead to convictions, they did have the consequence that, on the one hand, limited investigations were carried out. On the other hand, they created political pressure to act – not least because the public followed the developments with great interest.¹⁰⁷

2.2.5 The slow erosion of the *Ley de Caducidad*

The *Ley de Caducidad*, issued in 1986 and confirmed in the referendum of 1989, blocked almost every form of judicial proceedings for years. It was for the government to decide whether any possible criminal offences would be covered by the amnesty regulations. It was also up to the government to initiate investigations. The first four governments after the end of the dictatorship interpreted the *Ley de Caducidad* very broadly and were mostly satisfied with the superficial (and usually inconclusive) investigations by the military prosecutor's office. On the one hand, the governments did this because the amnesty law was endowed with the greatest possible democratic legitimacy thanks to the failed referendum. On the other hand, they did not want to strain their relationship with the armed forces, which had never undergone any real reforms.

The human rights movement and its lawyers had to fight continuously against the political will of the executive. That was to change – at least in part – when in 2005, 20 years after the end of the dictatorship, the centre-left alliance *Frente Amplio* with the socialist Tabaré Vázquez as president took power and, after him, the former *Tupamaro guerrillero* José 'Pepe' Mujica became president.

(i) The (partial) facilitation of trials by the *Frente Amplio* governments (since 2005)

Right from the start, in his inaugural address, President Tabaré Vázquez announced a different approach to the *Ley de Caducidad*. In the course of his time in power, he allowed legal proceedings to commence in around 25 cases. These were mainly cases involving crimes committed outside of Uruguayan national territory, crimes that were economically motivated or in which people were involved who could not invoke the *Ley de Caducidad*.¹⁰⁸

¹⁰⁷ *Derechos Humanos en el Uruguay: Informe 2004* (Montevideo: SERPAJ, 2004), 119–145.

¹⁰⁸ Álvaro de Giorgi, 'El "Nunca Más" uruguayo: Política ritual hacia el pasado reciente en el gobierno del Frente Amplio,' *Izquierdas* 42 (2018): 63–96, 69f.

President Pepe Mujica, the successor to Tabaré Vázquez, behaved in a similar way. He largely gave the judges free rein in investigating the cases for prosecution. In this context, two former rulers in Uruguay were sentenced to long terms in prison: Juan María Bordaberry, the civilian and ex-president who, by dissolving parliament, had made the cold coup by the military possible and who had previously been convicted of breaching the constitution. In February 2010 he was sentenced again to 30 years in prison for his responsibility for political murders and for the disappearance of nine people. Likewise, the former *de facto* president and retired general Gregorio Álvarez was sentenced to 25 years in prison for his responsibility for the murder of 37 Uruguayans kidnapped in Argentina. Other military and police officers, some of them high-ranking, were convicted in 2009 of the disappearance of 28 Uruguayans in Buenos Aires.¹⁰⁹

In general, the two *Frente Amplio* presidents respected the amnesty rule but abandoned the generous application that had been customary for years among their predecessors.

(ii) The attempt to repeal the *Ley de Caducidad* through a second referendum (2009)

The undeniable progress made in the area of criminal justice in the first years of the *Frente Amplio* governments was not sufficient for the victims and human rights groups. They saw the repeal of the *Ley de Caducidad* as the only way to end the impunity that still prevailed. Although *Frente Amplio* held the parliamentary majority, there was no political majority in favour of abolishing the law – especially since it was not only passed by parliament at the time but had also been confirmed by a referendum.

In November 2006, the *Coordinadora Nacional por la Nulidad de la Ley de Caducidad*, a national coordination for the abolition of the *Ley de Caducidad*, was founded from the human rights movement and from civil society groups. In the following year, they began to gather the signatures necessary to bring a fresh referendum.¹¹⁰

Even though there was no unified position on this initiative within the different groupings of the *Frente Amplio*, the powers that be within the *Frente Amplio* decided to support this cause. In June 2009 the responsible body, the *Corte Electoral* confirmed that there were sufficient signatures to allow a referendum to be held.

Over the following months the human rights movement and civil society groups used wide-ranging campaigns to attempt to rally a majority for the repeal of the amnesty law. The referendum took place on the same day as the presidential election in

¹⁰⁹ Francesca Lessa, '¿Justicia o impunidad? Cuentas pendientes a treinta años del retorno a la democracia,' *ILCEA – Revue de l'Institut des langues et cultures d'Europe, Amérique, Afrique, Asie et Australie* 26 (2016): 6, accessed 11 April 2022, <https://doi.org/10.4000/ilcea.3874> 1–16.

¹¹⁰ Ana Buriano, 'Ley de Caducidad en Uruguay y esencia ético-política de la izquierda,' *Perfiles Latinoamericanos* 38 (2011): 173–203, 185–192.

October 2009. This day produced paradoxical political decisions. On the one hand, the Uruguayans elected an ex-*Tupamaro* politician as president: José Mujica, a former *Guerillero* and long-term political prisoner. At the same time, however, only 47.98 percent of the electorate voted for the repeal of the *Ley de Caducidad*. Once again, the initiative narrowly missed the required majority. Thus the law was confirmed for a second time by a referendum. However, it would be short-sighted to interpret the result as meaning that a majority supported impunity for those responsible for human rights violations. Rather, the view was justified – also within the left – by arguing that substantial progress had been made since 2005 within the existing legal framework and therefore that it was not necessary to repeal the *Ley de Caducidad*.¹¹¹ Rather, the process of coming to terms with the past should be pursued within this normative framework. In contrast to the 1989 referendum, the issue did not disappear from the public and political agenda. As a result, the human rights movement subsequently made great gains and indeed achieved broad support, especially from young Uruguayans.¹¹²

(iii) Constitutional concerns about the *Ley de Caducidad*

A peculiarity of the Uruguayan legal system is that the Supreme Court can only carry out a constitutional review of a law on a case-by-case basis. The declaration of unconstitutionality therefore only affects that particular case. A corresponding decision by the Supreme Court therefore does not result in a general repeal of a law.¹¹³

In 2009, the Supreme Court declared the *Ley de Caducidad* unconstitutional for the first time in the case of the murder of Nibia Sabalsagaray, as it violated several articles of the constitution (Art. 4, Art. 82 and Art. 233) and thus undermined the basic principle of the separation of powers. The law was also declared incompatible with numerous international legal norms that are binding for Uruguay.¹¹⁴

This decision was followed by other cases in which the *Ley de Caducidad* was not used, as the Supreme Court had decided on a case-by-case basis that the amnesty law was incompatible with the constitution of the Republic of Uruguay.

111 Ana Buriano and Silvia Dutrénit, 'A 30 años de la ley de caducidad uruguaya ¿Qué y cómo debemos conmemorar?,' *Antíteses* 10/19 (2017): 351–375, 364f.

112 Gabriela Fried Amilivia, 'Sealing and Unsealing Uruguay's Transitional Politics of Oblivion: Waves of Memory and the Road to Justice, 1985–2015,' *Latin American Perspectives* 43/6 (2016): 103–123, 113f.

113 Mirtha Guianze, 'La Ley de Caducidad, las luchas por la Justicia y por la jurisdicción universal de los derechos humanos en Uruguay,' in *Luchas contra la impunidad: Uruguay 1985–2011*, ed. Gabriela Fried and Francesca Lessa (Montevideo: Trilce, 2011), 189–202, 193–195.

114 Lessa, '¿Justicia o impunidad?,' 6.

(iv) The law interpreting the *Ley de Caducidad*

Given existing concerns about the moral legitimacy of the *Ley de Caducidad*, as the number of cases grew in which constitutional doubt around the amnesty law was very evident, calls for a political solution became louder once again. In 2011, therefore, elected members of the *Frente Amplio* launched the initiative for a *ley interpretativa*. The *Frente Amplio* supported this project. However, there were major debates, even within this party alliance, about whether a law that had been confirmed in two referendums could *de facto* be overridden by a parliamentary resolution.

After extended discussions, Ley No. 18.831 with the title *Pretension punitiva del Estado* (clearly based on the title of the *Ley de Caducidad de la Pretension punitiva del Estado* but cleverly avoiding the word *Caducidad*, i.e. expiry) was adopted in October 2011. Article 1 restored the ‘state’s intention to punish’¹¹⁵ and refers explicitly to the ‘crimes committed by the practice of state terrorism up to 1 March 1985’ and which had been exempted from prosecution by Article 1 of the *Ley de Caducidad*. The law also stated that no statute of limitations or forfeiture periods apply to these offences. The offences are declared to be ‘crimes against humanity’ (*crímenes de lesa humanidad*) in the sense of the international treaties applicable to Uruguay.

This law appeared to effectively abolish the *Ley de Caducidad*. However, constitutional complaints were brought against this law for years to come. In 2013, for example, the Supreme Court ruled that it was not permissible to generally suspend the statute of limitations for human rights violations and to classify all acts as ‘crimes against humanity’.¹¹⁶

In other cases, legal debates were held about whether the *Ley de Caducidad* and/or the *Ley interpretativa* could be used. The scope for clarification and criminal proceedings was expanded significantly, so that criminal trials and judgements became possible. However, it still had to be decided on a case-by-case basis which legal norm and which interpretation applied.

2.2.6 The Gelman Case and the End of the ‘*Ley de Impunidad*’

The *Caso Gelman* is of great importance for the criminal investigation of human rights violations, as it brought the issue of the Disappeared, the missing children and continuing impunity into the focus of national and international interest. At the centre of this case were the son and daughter-in-law of the well-known Argentinian poet Juan Gelman. In August 1976, Marcelo Ariel Gelman (23 years old) and his

¹¹⁵ In Spanish this reads ‘Se restablece el pleno ejercicio de la pretensión punitiva del Estado para los delitos cometidos en aplicación del terrorismo de Estado hasta el 1 de marzo de 1985, comprendidos en el artículo 1 de la Ley No. 15.848, de 22 de diciembre de 1986.’

¹¹⁶ Francesca Lessa and Elin Skaar, ‘Uruguay: Halfway towards accountability,’ in *Transitional Justice in Latin America: The uneven road from impunity towards accountability*, ed. Elin Skaar, Jemima García-Godos and Cath Collins (London and New York: Routledge 2017), 77–102, 85f.

wife María Claudia García Iruretagoyena (19 years old), who was seven months pregnant, were in Buenos Aires when they were kidnapped by agents of the Argentinian secret service. They were held in the secret *Automotores Orletti* Detention and Torture Centre in Buenos Aires. Marcelo Ariel was murdered; his body was found in October 1976 but could not be identified at that point. The remains were buried in a cemetery in an unmarked grave. It was not until 1989 that forensic anthropologists were able to determine the identity of these unknown remains during their investigations. María Claudia has not been seen since she was abducted and is regarded as disappeared.¹¹⁷

After much research, Juan Gelman came to the reasonable assumption that the unborn child was still alive and living under a false identity in Uruguay. In May 1999, Gelman asked the then Uruguayan President Sanguinetti, while he was still incumbent, to initiate investigations to find his grandchild. However, after Sanguinetti did not take any action, Gelman again wrote a public letter to the President in October 1999, explaining in brilliant language the experience of pain and uncertainty among the relatives of the Disappeared. He found international support – including from Günter Grass, the German novelist who won the Nobel Prize for Literature in 1999, who also addressed an open letter to Sanguinetti.¹¹⁸ Finally, in November 1999, Sanguinetti responded by stating that there was no evidence that the heavily pregnant María Claudia had given birth and that the child was in Uruguay. He went even further and underlined that there were no missing children in Uruguay.¹¹⁹

A change of government took place on 1 March 2000. Jorge Batlle, from the *Colorado* Party, took over the presidency. One month after inauguration, Batlle informed the Gelmans that their grandchild had been found – a girl living in Montevideo who had been passed off by a police officer and his wife as their own child. It has been possible to reconstruct the facts that María Claudia García Iruretagoyena was secretly brought from Buenos Aires to Uruguay in 1976 while pregnant, was held there in a facility of the military intelligence service and finally gave birth to her daughter in the military hospital. While the child could be found and identified, the mother is still regarded as one of the Disappeared.¹²⁰

In July 2002, Juan Gelman finally filed a criminal complaint for the deprivation of liberty and the murder of his daughter-in-law and the kidnapping of his granddaughter. A lengthy to and fro between the court, the public prosecutor and the government ensued over the question of whether this complaint fell under the amnesty reg-

¹¹⁷ Ariela Peralta, 'El caso Gelman y los desafíos a la Ley de Caducidad,' in *Luchas contra la impunidad: Uruguay 1985–2011*, ed. Gabriela Fried and Francesca Lessa (Montevideo: Trilce, 2011), 203–215, 207.

¹¹⁸ The open letters can be found reproduced in Carlos Liscano, *Ejercicio de la Impunidad: Sanguinetti y Batlle contra Gelman* (Montevideo: Ediciones del Caballo Perdido, 2004).

¹¹⁹ *La República* (29.01.2000).

¹²⁰ Alonso, Larrobla and Risso, *Avanzar a tientas*, 65.

ulation of the *Ley de Caducidad*. The government eventually decided that the amnesty law applied here, so the case was closed in December 2003.

Juan Gelman continued his fight and initiated a constitutional lawsuit in 2004 with the aim of declaring Article 3 of the *Ley der Caducidad* unconstitutional. He also tried in 2005 to have the investigations reopened. Here, too, there was a to and fro between the various judges involved and the public prosecutor, which ultimately resulted in the case being closed again in December 2005.¹²¹

As all legal means in Uruguay had been exhausted, Juan Gelman and his granddaughter María Macarena Gelman then appealed to the Organization of American States and the Inter-American Court of Human Rights in May 2006. In the lawsuit, which was drawn up with the support of the *Center for Justice and International Law*, they argued that the *Ley de Caducidad* made it impossible to provide any information about the disappearance of María Claudia or of the circumstances surrounding the birth of María Macarena Gelman and her illegal adoption. The law also prohibits prosecution of those responsible for these crimes. In 2011, the Inter-American Court of Human Rights ruled in favour of the plaintiffs.¹²² The *Corte Interamericana de Derechos Humanos* demanded in its judgment that the Uruguayan state should carry out a ‘comprehensive, independent, effective and immediate investigation of the events’ with the aim of ‘establishing and sanctioning the intellectual and actual responsibilities of all persons involved’ (No. 250).¹²³

The judgement continued:

the *Ley de Caducidad* is therefore without effect and legal consequences because of its incompatibility with internationally binding human rights norms, such as the *Convención Interamericana sobre Desaparición Forzada de Personas*, as it prevents the investigation and possible punishment of those responsible for serious human rights violations. The state must ensure that the *Ley de Caducidad* does not constitute a further obstacle to investigations and prosecutions in this case, as in other similar cases (No. 253). The state is also obliged to prevent other legal mechanisms such as statutes of limitations, bans on retroactive effects or *ne bis in idem* regulations – i. e. the ban on judging the same matter twice – from hindering an investigation and prosecution (No. 254).

The Inter-American Court of Human Rights stressed that the fact that this law had been passed by a democratically elected parliament and confirmed by two referen-

121 Alonso, Larrobla and Risso, *Avanzar a tientas*, 65.

122 Jo-Marie Burt, Gabriela Fried Amilivia and Francesca Lessa, ‘Civil Society and the Resurgent Struggle against Impunity in Uruguay (1986–2012),’ *The International Journal of Transitional Justice* 7 (2013): 306–327, 319–322.

123 Corte Interamericana de Derechos Humanos, ‘Caso Gelman vs. Uruguay, Sentencia de 24 de febrero de 2011,’ accessed 11 April 2022, https://www.corteidh.or.cr/docs/casos/articulos/seriec_221_esp1.pdf, German translation: Inter-Amerikanischer Gerichtshof für Menschenrechte (IAGMR). Urteil vom 24. Februar 2011, ‘Gelman vs. Uruguay, aus dem Spanischen ins Deutsche,’ *Europäische Grundrechte-Zeitschrift* (2012): 702–713.

dums did *not* give the law any legitimacy in the international legal system.¹²⁴ The Inter-American Commission on Human Rights had already argued in a similar way in its 1992 report. At that time, however, the government was largely able to ignore this report.

2.2.7 Criminal Legal Proceedings – An Interim Review

For years, the *Ley de Caducidad* made any form of criminal investigation into human rights violations impossible. Nevertheless, the human rights movement and its lawyers succeeded time and again in finding gaps in the amnesty, exploiting them and even widening them. Often, lawsuits and judicial investigations have been strategically used to create political pressure to act.

The *Observatorio Luz Ibarburu*, an observation centre for human rights in Uruguay supported by human rights and victims' associations, lists all human rights processes in connection with the military dictatorship on its homepage. There are a total of 339 cases. The first judicial inquiries were launched in 1975. The complaints reached an initial high point after the end of the dictatorship in 1985 and 1986 (46 complaints). After the adoption of the *Ley de Caducidad* in 1986, the number dropped significantly. From 1987 to 2005, only 24 lawsuits were filed. There was a significant increase in 2011 and 2012, when 164 lawsuits were filed; from 2013 to 2020 there were a further 23 lawsuits.

Judgements were only pronounced and enforced in 5 percent of the lawsuits, i. e. in 15 cases. Almost half of the lawsuits (48 percent) are in the process of preliminary judicial investigations (*presumario*) – and most of them have been at this stage for many years without any progress. Of the total 339 proceedings, 102 have been closed and archived.¹²⁵

The offences to which the complaints relate were committed between 1969 and 1985. There were notable clusters in 1972 and 1973 (a total of 24 cases) and 1975 and 1976 (a total of 48 cases). Of the 339 complaints, 104 cases relate to torture, 61 cases to deprivation of liberty, 30 cases to kidnapping, 43 cases to enforced disappearance and five to child abduction.¹²⁶

Between 2002 and 2020, a total of 45 people were convicted of human rights violations during the dictatorship in Uruguay. Of these people, 33 were still alive at the

¹²⁴ Karina Theurer, 'Durch Referenden bestätigte Amnestiegesetze in Fällen gewaltsamen Verschwindenlassens unvereinbar mit der Amerikanischen Menschenrechtskonvention: Das Urteil des Inter-Amerikanischen Gerichtshofs für Menschenrechte in der Sache Gelman v. Uruguay,' *Europäische Grundrechte-Zeitschrift* (2012), 682–693, 687; Peralta, El caso Gelman, 213; Leonardo Filippini, 'Reconocimiento y justicia penal en el caso Gelman,' *Anuario de Derechos Humanos* (2012): 185–193.

¹²⁵ See the website https://www.observatorioluzibarburu.org/causas/?text=&case_state=&court__region=&court=&o=file_date, accessed 11 April 2022, for detailed information about each of the cases.

¹²⁶ Accessed 11 April 2022, <https://www.observatorioluzibarburu.org/reportes>.

end of 2020, 20 of them are serving their sentences in prison and 13 are under house arrest for reasons of age and health.¹²⁷

These developments are remarkable – especially in light of the fact that criminal prosecution was prevented for almost two decades. Another important step in utilizing criminal investigations to deal with the past was the establishment of a special unit for human rights cases in 2015, which was intended to support the General Public Prosecutor's Office in making the proceedings around human rights violations more efficient.¹²⁸ Nevertheless, there is still no clear legal line in dealing with human rights violations: the *Ley de Caducidad* is still in use. It must be decided on a case-by-case basis whether the statute of limitations applies or whether the offences are to be classified as crimes against humanity and therefore cannot be statute-barred and amnestied.¹²⁹

2.3 The Replacement of the Elites

The return to democracy brought with it a near complete – exchange of political elites. During the dictatorship, political parties – with the exception of the two traditional larger parties, the *Blancos* and *Colorados* – were banned. However, the major parties were prohibited from undertaking any activities. With the loosening of the military regime, these restrictions were lifted, so that a party alliance could be formed, which ultimately negotiated the transition to democracy with the military.

After the parliamentary elections, the MPs consisted of the two traditional parties and the *Frente Amplio*. None of these parties were close to the military and they represented their interests at parliamentary level. Some of the *Frente Amplio* MPs had, in fact, been active in the resistance against the dictatorship.¹³⁰

There was a high level of continuity in the area of administration. Comprehensive lustration measures were not carried out.¹³¹ In the field of justice, the Supreme Court judges who had been appointed by the military government were replaced. In addition to this exchange of the functional elite, only a few personnel changes were carried out in the lower ranks. There was less need to replace staff, since the ordinary judiciary at the operational level had acted with far-reaching autonomy even during

¹²⁷ Email correspondence between the lawyer Pablo Chargoña from the *Observatorio Luz Ibarburu* and the author on Dec. 18, 2020.

¹²⁸ Alonso, Larrobla and Risso, *Avanzar a tientas*, 156.

¹²⁹ Alicia Castro, 'Derechos humanos y delitos de lesa humanidad: Un análisis de la jurisprudencia de la Suprema Corte de Justicia sobre imprescribibilidad de delitos de la dictadura,' *Revista de Derecho Público* 27 (2018): 7–34.

¹³⁰ Eduardo Bottinelli, 'Las carreras políticas de los senadores en Uruguay: ¿Cambios o continuidades ante el triunfo de la izquierda?,' *Revista de Sociología e Política* 16/30 (2008): 29–43, 32.

¹³¹ Pablo Galain Palermo, 'Uruguay,' in *Justicia de Transición: Informes de América Latina, Alemania, Italia y España*, ed. Kai Ambos, Ezequiel Malarino and Gisela Elsner (Berlin and Montevideo: Konrad-Adenauer-Stiftung, 2009), 391–414, 395.

the dictatorship. Unlike in other countries in the region, the judges in the ordinary (civilian, i.e. non-military) courts were not suspected of being accomplices to the dictatorship. The trials for ‘political’ crimes were brought before the military courts during the dictatorship. With the return to democracy, the military courts’ jurisdiction again became limited to members of the armed forces.¹³²

As a result of the pact-based transition, the armed forces remained largely unaffected. Although they could not depend on parties with an affinity for them to represent their interests in the legislature, their influence on actual politics was secured by the Ministry of Defence. There were also no personal consequences beyond the leadership level: the military involved in human rights violations not only went unpunished, but were also able to pursue their careers within the armed forces and were even promoted.¹³³ This only changed with the increasing influence of the *Frente Amplio* and when Tabaré Vázquez came to power in 2005. Since then, possible implications from the time of the dictatorship have played a more important role in decisions relating to promotions.

2.4 Reparations

In Uruguay’s process of dealing with the past, different phases or categories of reparations policies can be identified: (1) compensation payments that were introduced immediately after the end of the dictatorship, (2) compensation payments that follow the recommendations of the Truth Commission (see 2.10.3) and (3) compensation payments awarded to victims by national or international courts.¹³⁴

2.4.1 The First Compensation Payments After the End of the Dictatorship (1985 onwards)

After the end of the dictatorship, the first measures were taken that can be understood as reparations in a broader sense. It was – as Louise Mallinder writes – about reversing some of the damage. In the 1980s, however, no compensation in the strictest sense was awarded for victims of human rights violations.¹³⁵

(i) The rehabilitation of the *Destituidos*

The *Ley de Pacificación Nacional* (Ley No. 15.373), regulating the amnesty and release of political prisoners, was passed immediately after Sanguinetti took office. This also

¹³² Skaar, ‘Uruguay,’ 70; Skaar, ‘Un análisis de las reformas judiciales,’ 167.

¹³³ Galain, ‘Uruguay,’ 395.

¹³⁴ Skaar, ‘Uruguay,’ 79.

¹³⁵ Mallinder, *Uruguay’s Evolving Experience*, 1; Lessa and Skaar, ‘Uruguay,’ 91.

addressed the professional rehabilitation of civil servants who had lost their jobs for political reasons (Art. 25).

In a further rehabilitation act (Ley No. 15.783) in the same year, other *Destituidos*, i.e. those dismissed for political reasons, were allowed to return to their former jobs or to equivalent positions. Possible promotions and levels of seniority were also to be taken into account when reinstating employees. For periods of political unemployment, the full pension entitlement was credited or – in the event of the death of the beneficiary – transferred to the relatives (Ley No. 15.783, Art. 1–27). This law enabled around 10,500 workers who had been laid off to return to their jobs, and around 6,000 pensions were approved. In the years that followed, different laws expanded the circle of recipients. These were mainly workers from the meat processing companies, which were important for the Uruguayan economy and were publicly owned (*Frigorífico Nacional*).¹³⁶

(ii) Support for those returning from exile

In response to the fact that around 350,000 Uruguayans, around 12 percent of the population, had gone into exile during the dictatorship, the *Ley de Pacificación Nacional* made arrangements to make life easier for returning exiles.¹³⁷ Article 24 provided for the establishment of the *Comisión Nacional de Repatriación* (CNR), embedded within the Ministry of Education and Culture. The CNR, active from 1986 to 1989, supported the return and reintegration of exiles. Specifically, they helped with customs matters, consular issues, school registration for children, questions about healthcare insurance, etc. Loans and funding programmes for professional reintegration were also initiated.¹³⁸ The return of highly qualified workers was to be encouraged through special incentives. The CNR programs were financed by the UNHCR and UNDP, among others, as well as through donations.¹³⁹

2.4.2 Compensation Payments in the Context of the *Comisión para la Paz* (2000 onwards)

In the years after the adoption and confirmation of the *Ley de Caducidad* via referendum, coming to terms with the past played a minor role with less of a priority. In the context of this collective silence in relation to the past, the *Corte Interameri-*

¹³⁶ For example, compare Ley No. 16.102, Ley No. 16.163, Ley No. 16.451, Ley No. 16.561 and Ley No. 17.449.

¹³⁷ Ministerio de Educación y Cultura. Comisión Nacional de Repatriación, *Programa de la Comisión Nacional de Repatriación: Salud – Vivienada – Trabajo: Año 1986*, (Montevideo: MEC, 1986), 1f.

¹³⁸ Ministerio de Educación y Cultura, *Programa de la Comisión Nacional de Repatriación*, 4–13.

¹³⁹ Jorge Errandonea, 'Justicia transicional en Uruguay,' *Revista Instituto Interamericana de Derechos Humanos* 47 (2008): 13–69, 48.

cana de Derechos Humanos (29/92) report, in which the Uruguayan state was asked to adequately compensate the victims of human rights violations, received hardly any attention.¹⁴⁰

It took the work of the Truth Commission *Comisión para la Paz* set up by President Batlle in 2000 to legally regulate further compensation measures (see 2.10.3). In its final report, the *Comisión para la Paz* spoke of the state's 'irrefutable duty' to 'alleviate or repair as far as possible the damage caused by the illegal and illegitimate conduct of its employees' (No. 77 and No. 79 respectively).¹⁴¹ Specifically, the commission recommended the creation of a successor institution, the clarification of the legal status of the Disappeared and compensation that was to be 'integral and comprehensive' and would 'aim not only at satisfactory economic provision for the victims, but also at moral and emotional reparation' (No. 79). The Commission found that the Uruguayan President should officially recognize the results of the investigations and ensure that they were enforced. Appropriate compensation measures for the families of those affected should also be initiated.

The work of the Truth Commission had created a political and societal climate where people were aware of the crimes of the military dictatorship and of the need to seek legal and criminal redress for them. This opened the door for discussions about compensation measures for other groups of victims.

(i) Further regulation of pensions rights

Because the end of active employment was approaching for many of those who had been affected by work bans, there was a need for regulation with regards to the recognition and crediting of periods in which those affected had *not been allowed* to be employed. With this in mind, further legal regulations were made to offset those times against pension entitlements, in the same way as the existing regulations. For example, Ley No. 17.449 (2002) regulated the recognition of years in exile in relation to retirement benefits. Ley No. 18.033 (2006) expanded the circle of recipients and regulated the recognition of those people who had left the country for political reasons, who had been imprisoned or had been forced to go underground. This law also included people who had lost their jobs in the private sector for political reasons.¹⁴² Finally, in Ley No. 17.949 (2006), the pension entitlements of those members of the armed forces who had been dismissed, sanctioned or demoted for political reasons during the period of state terrorism were regulated. Ley No. 17.620 (2003) expanded the group of beneficiaries of Ley No. 15.783 (1985) to include teachers in the public education sector.

¹⁴⁰ Accessed 11 April 2022, <http://www.cidh.oas.org/annualrep/92span/Uruguay10.029.htm>.

¹⁴¹ Comisión para la Paz, *Informe Final*; the citations refer to the numbering of this document.

¹⁴² Rafael Giambruno, 'A mitad de camino: El gobierno de izquierda ante el desarrollo de políticas reparatorias en Uruguay (1985–2015),' in *Servicio Paz y Justicia – SERPAJ Uruguay, Derechos Humanos en el Uruguay: Informe 2016* (Montevideo: SERPAJ, 2016), 76–83, 76–78.

(ii) The clarification of the legal status of the ‘Disappeared’ (2005)

The ‘disappearance’ of people not only had serious social and psychological consequences for relatives. The uncertainty of the situation also gave rise to a number of property and civil law problems. For example, it was not easy to dispose of the property titles of the disappeared person or to remarry.

In order to achieve legal certainty and the capacity to act, relatives were often only given the option to have the disappeared person declared dead in relation to the relevant authorities. This was always particularly difficult for the families: they had to apply for a document from the state to prove the alleged death of the disappeared person. This same state they also held responsible for the disappearance of their relatives. The state had also long denied any responsibility for the disappearance, denied that their relatives had disappeared and had refused to provide any clarity about the disappearance.

In its follow-up report, the *Comisión para la Paz* called for a judicial clarification on the legal status of the Disappeared and explicitly referred to the regulation that had already been created in Argentina in 1995 for the cases of the Disappeared.¹⁴³

In 2005, the legislature reacted to this precarious situation and established the Ley No. 17.894, which created the legal status of ‘absence due to forced disappearance’ (*declaración de ausencia por desaparición forzada*), by which the disappeared person was considered deceased in terms of civil and property law, without the relatives having to apply for a legal death certificate.

(iii) The Compensation Pension for Former Political Prisoners (2006)

From 2000 onwards, former political prisoners began to organize and demand their rights.¹⁴⁴ Up to that point they had not received any compensation, with the exception of their periods of imprisonment counting towards their retirement benefits. They therefore called for a *reparación integral*, which, in addition to financial compensation, included comprehensive recognition measures and extensive compensation for the damage caused.

After much debate, Ley No. 18.033 was finally adopted in 2006. This law provided for a small compensation pension for former political prisoners or exiles from the age of 60 onwards. Under certain conditions, this pension could also be transferred to relatives in the event of the death of the person concerned. However, this benefit was of a lower value than other pension payments and could not be combined with them, i.e. if they already received a pension greater than the compensation amount, then they did not receive the compensation. If their pension was less than the compensation amount, then they only received the difference between the two.¹⁴⁵ This

¹⁴³ Comisión para la Paz, *Informe Final*, No. 76.

¹⁴⁴ Lessa ‘¿Justicia o impunidad?’, 11.

¹⁴⁵ Errandonea, ‘Justicia transicional,’ 48f.

‘reparations law’ therefore fell far short of the demands and expectations of those affected. Even when measured against international standards, its scope is rather limited.¹⁴⁶

(iv) The Law for Integrated Compensation for Victims of the Dictatorship (2009)

In 2009, 24 years after the end of the dictatorship, a law on compensation for the victims of state terrorism was finally passed, which represents an actual law on *compensation* in the sense of a *reparación integral*.

The law formally recognized the ‘breakdown of the rule of law,’ which occurred from 1973 to 1985 and which ‘hindered the realization of the fundamental rights of the person by violating human rights and the norms of humanitarian law’ (Art. 1). The law also recognized the period from 1968–1973 as a state of emergency, when the state was responsible for the ‘systematic practice of torture, forced disappearance, illegal imprisonment, murder, the destruction of the physical and mental integrity of persons and for political exile (Art. 2).’ The law speaks clearly about the ‘ideological framework of the national security doctrine’ or refers explicitly to ‘state terrorism’.

In Article 3, the text of the law explicitly mentions the right to a ‘reparación integral’ for all those who have become victims due to the direct actions of the state or due to the state’s failure to take action. The law also explicitly mentions the aspects of a *reparación integral* that are considered fundamental in an international context: restitution (*restitución*), compensation (*indemnización*), rehabilitation (*rehabilitación*), satisfaction (*satisfacción*) and a guarantee that these things will never happen again (*garantías de no repetición*).

The law defines a victim as all those persons whose ‘right to life, to physical and psychological integrity, to freedom both inside and outside the national territory has been violated’, either ‘for political or ideological reasons’ or because they belonged to certain groups. As a further prerequisite, the law states that the acts must have been committed with the participation of ‘*agentes del Estado*’, i.e. state employees, or by people who acted with state authorization, support or consent. The period in which the prosecutable acts were committed extended from 1968 (i.e. the imposition of the state of emergency) to 1985 (Art. 4 and 5).

The law provides for the following distinct measures:

- Moral reparation through material and symbolic measures by which the dignity of the victims is restored and through which the state recognizes its responsibility for terrorism (Art. 7).
- Placing memorial and information boards at places where human rights violations have been committed (Art. 8).

¹⁴⁶ The amount is adjusted to the relevant pricing trends. Those affected received around 470 euros (12/2020). This corresponded roughly to twice the minimum wage.

- Formal recognition of being a victim of state injustice in the form of an official document (for former prisoners; people who died in custody; the Disappeared; people who died as a result of illegitimate actions by the state; children who were born while their parents were in custody or who were imprisoned with them; disappeared children; political refugees, etc.) (Art. 9).
- Free and lifelong healthcare (including psychological, psychiatric and dental treatment) for people who were incarcerated for more than six months without sentencing or who were severely ill-treated while in detention, as well as for children who were detained or who were born in detention (Art. 10).
- One-off compensation payment for relatives of the Disappeared of 500,000 accounting units (UI – approx. 43,000 euros).¹⁴⁷ Victims of severe abuse receive a one-off payment of 250,000 UI (around 21,500 euros); disappeared children receive 375,000 UI (around 32,250 euros); Children who were born while their parents were in custody or were incarcerated with them for longer than 180 days receive 200,000 UI (17,500 euros).

The law also provided for the establishment of a *Comisión Especial*. This institution was to be embedded in the Ministry of Education and Culture (which also includes the Department of Justice) and was responsible for ensuring that the provisions of the law were implemented quickly.

As part of the implementation of the provisions of this Compensation Act, certain progress was made, especially with regard to the recognition of injustice, the policy of remembrance and commemoration, as well as the moral rehabilitation of the victims.

With regard to financial compensation, however, five years after the law was passed the balance sheet was still rather modest. According to Pablo de Greiff, the UN Special Rapporteur for the Promotion of Truth, Justice and Reparations, by mid-2014 only 360 applications for financial compensation had received a positive response. Furthermore, only 517 documents were issued that acknowledged and identified individuals as victims of state terrorism. De Greiff also criticized the fact that the newly created *Comisión Especial* did not have sufficient staff and infrastructure and that the staff were not adequately trained.¹⁴⁸

147 The value of these ‘unidades indexadas’ (UI) is measured against the purchasing power of the Uruguayan peso and therefore varies. The euro amounts specified here were calculated on the basis of the value of a UI and the current exchange rate (as of 12/2020).

148 Pablo de Greiff, ‘Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non recurrence, Mission to Uruguay,’ *Human Rights Council*, 27th session, A/HRC/27/56/Add. 2 (New York: United Nations, 2014), No. 42–51.

2.4.3 Reparations Received through Judicial Processes

After the adoption of the *Ley de Caducidad*, victims had to take action to force the state to carry out further investigations and to admit guilt by means of civil suits. In some of these cases, it enabled victims or their relatives to obtain compensation payments (see 2.2.4).

The compensation payments for which the Uruguayan state was made responsible in the *Gelman vs. Uruguay* proceedings were of great public importance (see 2.2.6). The *Corte Interamericana de Derechos Humanos* demanded that Uruguay, among other things, carry out thorough investigations and bring those responsible to account. Likewise, the state was required to publicly recognize its responsibility for its crimes. The writer Juan Gelman had repeatedly called for an appropriate public act. In addition, the state was obliged to erect a plaque with the names of the victims who had been held in the secret service branch.¹⁴⁹

As a result of this ruling, the Republic of Uruguay paid María Macarena Gelman compensation of 513,000 US dollars.¹⁵⁰ In March 2012, a public ceremony took place in the Uruguayan parliament, at which, in addition to the parliamentarians, the commanders-in-chief of the armed forces, the judges of the Supreme Court, Juan and Macarena Gelman, as well as representatives of human rights and victims' organizations and other civil society groups were present. In his 20-minute speech, President José Mujica acknowledged the responsibility of the state for the crimes committed against the Gelman family. He also underlined the victims' right to compensation.¹⁵¹ While this act of moral rehabilitation and admission of guilt made explicit reference to the Gelman case, its meaning was far, far greater.

2.4.4 Symbolic Compensation

From the outset, the victims and victims' organizations demanded much more than simply financial compensation. They also demanded symbolic compensation, recognition of their victim status and of the responsibility of the state for the injustice that had affected them. A qualitative step here was the recognition of the final report and the conclusions of the *Comisión para la Paz* by President Jorge Batlle (Decreto No. 146/2003). In the following years, the politics of commemoration gained in importance and memorial sites were established etc. (see 2.8). The official apology by

¹⁴⁹ Peralta, 'El caso Gelman', 210–213.

¹⁵⁰ Debbie Sharnak, 'The Gelman Case and the Legacy of Impunity in Uruguay,' in *40 Years are Nothing: History and memory of the 1973 coups d'état in Uruguay and Chile*, ed. Pablo Leighton and Fernando López (Cambridge: Cambridge Scholars Publishing, 2015), 33–55, 43.

¹⁵¹ Francesca Lessa, 'Elusive Justice, Changing Memories and the Recent Past of Dictatorship and Violence in Uruguay: An Analysis of the 2012 Public Act in the Gelman Case,' *International Journal for Conflict and Violence* 8/1 (2014), 75–90, 81f.

President José Mujica in the Gelman case (see 2.4.3) also represented a form of symbolic reparation that went beyond the specific case.

It is also of great symbolic importance that, in 2012, the *Servicio de Información de Defensa*, the military intelligence service building that also served as a detention and torture centre during the dictatorship, became the headquarters of the National Human Rights Institute (INDDHH). Again and again (local) initiatives of symbolic or moral reparation took place. In 2009, for example, the city of Montevideo declared ten children of those who had disappeared honorary citizens of the city.¹⁵² Likewise – initially hesitantly, but from the year 2000 onwards more and more frequently – streets, schools or public institutions were named after people who were victims of state terrorism or who are particularly connected to the recent history of Uruguay. In Montevideo, for example, two streets and a square now bear the names of the two murdered parliamentarians Zelmario Michelini and Héctor Gutiérrez Ruiz.¹⁵³

2.5 Reconciliation

The concept of reconciliation does not play a major role in how Uruguay is trying to come to terms with the past. It is not as if there is fundamental rejection of the concept, as is the case with many Argentinian human rights and victim organizations. The term reconciliation is hardly mentioned within political and social discussions. The term or concept that comes closest to reconciliation and that is used again and again in Uruguayan discourse (especially from the official perspective) is *pacificación*, i. e. rebuilding societal peace.

The reason for the limited uptake of the concept of reconciliation may be partially located in the religious connotations surrounding the concept. Uruguay is a nation where laicism plays a central role in its concept of self. The Catholic Church had acted cautiously during the dictatorship and had itself become a target of state repression.¹⁵⁴ With the exception of SERPAJ, the victims' and human rights organizations had no particular affinity with church and religion. In some early documents and declarations by SERPAJ, the term 'reconciliation' is used, which ties in with

¹⁵² Alonso, Larrobla and Risso, *Avanzar a tientas*, 107.

¹⁵³ Virginia Martínez Guidolin, *Políticas de Memoria del pasado reciente en las ciudades de Montevideo y Buenos Aires* (MA-Thesis, Montevideo: Universidad de la República de Uruguay, Facultad de Ciencias Sociales, 2015), 68–78.

¹⁵⁴ Veit Straßner, 'Uruguay,' in *Kirche und Katholizismus seit 1945*. Bd. 6: Lateinamerika und Karibik, ed. Johannes Meier and Veit Straßner (Paderborn: Schöningh, 2009), 433–446; Amy Edmonds, 'Moral Authority and Authoritarianism: The Catholic Church and the Military Regime in Uruguay,' *Journal of Church and State* 56/4 (2014): 644–669, 656–657.

the basic Christian orientation of this particular human rights organization.¹⁵⁵ Over time, however, the term came to be used less often within SERPAJ documents.

In terms of content, too, for years it seemed inappropriate to speak of ‘reconciliation’. The armed forces made no significant effort to question their role during the dictatorship, to recognize institutional responsibility or indeed to ask for forgiveness. It was not until the end of 2020 that the commander-in-chief of the Army announced a ‘process of historical analysis’ of the Army’s role during the dictatorship.¹⁵⁶

2.6 Laws Relating to Transitional Justice

The issue of dealing with the past, and, in particular, issues around compensation, have always been dealt with in Uruguay in a legal manner. Since the origins, content and context of the development of the reparation laws have already been presented in more detail at relevant points in this study, a tabular overview of the relevant legal norms should suffice here in order to avoid duplication and repetition (Tab. 2).

Tab. 2: Laws relating to Transitional Justice in Uruguay.

Legal Norm	Year	Content
Ley No. 15.737	1985	<i>Ley de Pacificación Nacional</i> : Amnesty for political prisoners; Establishment of the National Repatriation Commission; Reinstatement of civil servants dismissed for political reasons, etc.
Ley No. 15.783	1985	Professional rehabilitation for individuals who had been dismissed for political reasons.
Decreto No. 127/985	1985	Renaming of the <i>Día de los Caídos en la Lucha contra la sedición</i> (Memorial Day for the Fallen in the Fight against the Insurrection) to <i>Día de los Caídos en la Lucha por la Defensa de las Instituciones Democráticas</i> (Memorial Day for the Fallen in the Struggle to Defend Democratic Institutions).
Ley No. 15.848	1986	<i>Ley de Caducidad de la pretensión punitiva del Estado</i> : Amnesty Law for the Members of the armed forces.
Ley No. 16.102	1989	Regulations surrounding the professional rehabilitation and awarding of pensions credits for workers in the publicly owned meat processing industry (<i>Frigorífico Nacional</i>).
Ley No. 16.163	1990	Regulations surrounding the professional rehabilitation and awarding of pensions credits for workers in the publicly owned meat processing industry (<i>Frigorífico Nacional</i>).

¹⁵⁵ Stephan Ruderer and Veit Strassner, ‘Ecumenism in National Security Dictatorships: Ecumenical Experiences in the Southern Cone,’ in *A History of the Desire for Christian Unity*, Vol. III, ed. Alberto Melloni (Paderborn: Brill, forthcoming).

¹⁵⁶ Ejército: el comandante pide asumir responsabilidad por dictadura, *El Observador* (07.11.2020).

Tab. 2: Laws relating to Transitional Justice in Uruguay. (*Continued*)

Legal Norm	Year	Content
Ley No. 16.451	1993	Regulations surrounding the professional rehabilitation and awarding of pensions credits for workers.
Ley No. 16.561	1994	Expansion of the scope of the beneficiaries covered by Ley No. 15.783 to include workers in the publicly owned meat processing industry (<i>Frigorífico Nacional</i>).
Ley No. 16.724	1995	Ratification of the <i>Convención Interamericana Sobre Desaparición Forzada de Personas</i> (Inter-American Convention on the forced disappearance of people).
Resolución No. 858/000	2000	Establishment of the Truth Commission <i>Comisión para la Paz</i> .
Ley No. 17.449	2002	Crediting of periods of exile towards pension entitlements.
Ley No. 17620	2003	Regulation of pension entitlements for teachers in the public education system who were banned from working during the dictatorship.
Decreto No. 146/2003	2003	Recognition of the final report of the <i>Comisión para la Paz</i> (includes recognition of state responsibility for human rights violations) .
Resolución No. 449/2003	2003	Establishment of the <i>Secretaría de Seguimiento der Comisión para la Paz</i> , the successor secretariat of the Truth Commission.
Ley No. 17.894	2005	Clarification of the legal status of the Disappeared through the <i>declaración de ausencia por desaparición forzada</i> .
Ley No. 17.949	2006	Regulation of pension entitlements for members of the military who had been sanctioned for political reasons.
Ley No. 18.033	2006	Regulation of pension entitlements for people who were excluded from gainful employment for political reasons due to work bans, exile, etc.
Ley No. 18.220	2007	Establishment of the <i>Sistema Nacional de Archivos</i> (National Archives System).
Ley No. 18.435	2008	Creation of the <i>Archivo Nacional de la Memoria</i> (National Memory Archive).
Ley No. 18.446	2008	Creation of the <i>Institución Nacional de Derechos Humanos y Defensoría del Pueblo</i> (INDDHH) (National human rights institution and ombudsman).
Ley No. 18.596	2009	Comprehensive Law on Compensation for Victims of the Military Dictatorship.
Decreto No. 297/010	2010	Establishment of the <i>Oficina de Atención a las víctimas del terrorismo de Estado</i> (Office for the Care of Victims of State Terrorism) to implement the health services provided for in the Compensation Law Ley No. 18.596.
Ley No. 18.831	2011	Interpretation law for Ley No. 15.848 (<i>Ley de Caducidad</i>).

Tab. 2: Laws relating to Transitional Justice in Uruguay. (*Continued*)

Legal Norm	Year	Content
Resolución No. 450/011	2011	Establishment of a <i>Comisión Interministerial</i> to ensure compliance with the requirements of the judgement against the Uruguayan state in the Gelman case.
Resolución No. 548/012	2012	Rededication of the former military intelligence building as a memorial and the seat of the National Human Rights Institute.
Resolución No. 463/013	2013	Establishment of the <i>Secretaría de Derechos Humanos para el Pasado Reciente</i> (Human Rights Secretariat for the Recent Past).
Decreto No. 131/015	2015	Establishment of the working group for Truth and Justice (<i>Grupo de Trabajo por Verdad y Justicia</i>).
Ley No. 19.641	2018	Establishment of Memorials for the Remembrance of State Terrorism; Establishment of a memorials commission in the <i>Institución Nacional de Derechos Humanos y Defensoría del Pueblo</i> (INDDHH).
Ley No. 19.822	2019	Transfer of responsibility for the search for the <i>detenidos desaparecidos</i> to the <i>Institución Nacional de Derechos Humanos y Defensoría del Pueblo</i> (INDDHH).

Note: All the laws, decrees and ordinances listed here are now available online, but the URLs change frequently. See <https://www.gub.uy/secretaria-derechos-humanos-pasado-reciente/institucional/normativa>, accessed 11 April 2022, for details on many of the laws. The laws can also be easily found by a simple online search with the number of the law or decree (if necessary with the additional search criterion ‘Uruguay’).

2.7 Access to Files

2.7.1 State Archives

As in other countries with a comparable history, the question of the existence and accessibility of archives is of great relevance – both for investigating and coming to terms with the past and for possible legal proceedings.¹⁵⁷

As in other countries, the armed forces initially denied the existence of archives from the time of the dictatorship. In the case of Uruguay, however, the demands for access to such archives were relatively muted, largely due to the position of strength held by the armed forces in the nation’s post-authoritarian setting and the support of the governments. In addition, the referendum supporting the amnesty law also tied the hands of the judiciary.

¹⁵⁷ Giulia Barrera, ‘Of condors and judges: archival musings over a judicial investigation,’ *Archival Science* 9 (2009): 203–214.

A change was already apparent during Jorge Batlle's time in power, but was only consolidated with the change of government in 2005.¹⁵⁸ In the course of the work of the Commission of Historians established by President Tabaré Vázquez (see 2.10.4), 19 archives referring directly and indirectly to the military dictatorship were discovered and evaluated. From an archival point of view, most of these archives were in a critical condition. In addition, they were incomplete and there was reason to believe that archival holdings had been destroyed. However, many documents were shared among the various institutions to increase mutual knowledge and were consequently archived several times. Historians were able to prove the existence of archives that were and are of crucial importance for legal proceedings, such as the archives of the military intelligence service SID or the *Organo Coordinador de Actividades Anti-subversivas* (OCA), the Office of Coordination for Anti-Subversion Activities. These archives, which fall under the responsibility of the Ministry of Defence or the armed forces, have not yet been located. The historians involved in transitional justice are of the opinion that these and other archives do exist and that the state must make more effort to locate them.¹⁵⁹

In order to improve the situation with the archives, some laws were passed during President Vázquez's first term in power.¹⁶⁰ At the end of 2007, Ley No. 18.220 created the *Sistema nacional de Archivos* under the direction of the *Archivo General de la Nación*, part of the Ministry of Culture and Education. This archival system is intended to contribute to the 'conservation and organization of the documentary heritage of the nation and the documents of governmental administration' and thus to 'support the civil administration, culture, academic development' as well as serving as evidence for the courts (Art. 1). This archival system should include public and private archives that want to be included in the system (Art. 6).

The establishment of this archival system represented a significant step forward, since it not only regulated the financing of the archives, but also their accessibility for a broader public. However, more than ten years after the law was passed, it is still in the implementation phase – although significant parts of the law have already been put into practice.¹⁶¹

158 Vania Markarian, 'Los documentos del pasado reciente como materiales de archive: Reflexiones desde el caso uruguayo,' *Contemporanea – Historia y problemas del siglo XX* 7/7 (2016): 178–190; Vania Markarian, 'Mal de archivos,' *La diaria* (25.04.2017).

159 Gerardo Caetano, 'Los archivos represivos y el debate sobre los criterios para su mejor utilización como instrumento de justicia y de derechos,' *Claves: Revista de Historia* 3/5 (2017): 155–183, 161–167.

160 Gerardo Caetano, 'Los archivos represivos en los procesos de "justicia transicional": una cuestión de derechos,' *Perfiles Latinoamericanos* 37 (2011): 9–32, 20.

161 Liliana Gargiulo Silvaniño and Fabián Hernández Muñiz, 'Archivos y derechos humanos en Uruguay: Estado de la cuestión: La Secretaría de Derechos Humanos para el Pasado Reciente de la Presidencia de la República Oriental del Uruguay: génesis y acciones archivísticas actuales,' *Informatio* 23/1 (2018): 95–117, 100; Mauricio Vázquez Bevilacqua, 'A diez años de la creación del Sistema Na-

In connection with the restructuring of the archival system, the *Archivo Nacional de la Memoria*, the National Memory Archive, was created in 2008 (Ley No. 18.435). The archive is intended to contribute to underlining the importance of human rights and democracy and to realizing the ‘individual and collective legal right to truth, memory and access to public information about state human rights violations’ (Art. 2). Documents and (physical) archival materials and artifacts from the years 1973 to 1985, but also from the years before or after, should be included if they are relevant to an understanding of the military dictatorship. Art. 10 of the law stipulates that all public bodies are obliged to submit certified copies of any required documents to the *Archivo Nacional de la Memoria*. The *Ministerio de Educación y Cultura* is responsible for all resources necessary to run the archive.

However, after the law was passed, it was not possible to enact the relevant implementing provisions and secure funding, so the memory archive actually still has yet to come into existence.

2.7.2 Civil Society Initiatives

In addition to state archives, there are also archives relating to the human rights movement. The archive of the MFDD, organized with the support of students from the *Universidad de la República*, as well as the archives of SERPAJ, IELSUR and the human rights secretariat of the PIT-CNT, are of particular importance here.

(i) Digitizing and linking archival holdings

Lecturers and students from various faculties (including I.T./Computer Science and Communications) at the *Universidad de la República* have been involved in the *Cruzar* (‘Crossing’) project for a number of years, with the task of capturing and digitizing the holdings of public and civil society archives and making them accessible for computer-aided analysis. The research focus of this digital humanities project involves how the regime functioned.¹⁶²

(ii) A Uruguayan Human Rights Wiki

In cooperation with MFDD, CRYSQL, SERPAJ and INDDHH, an initiative began in 2018 with the aim of improving the accessibility of reliable information on Wikipe-

cional de Archivos en Uruguay: Análisis de la Ley 18220,’ *Revista de la Facultad de Derecho* 44 (2018): 1–32, 15, accessed 11 April 2022, <http://dx.doi.org/10.22187/rfd2018n44a6>.

162 Accessed 11 April 2022, <https://cruzar.uy>.

dia.¹⁶³ An extensive list of Wikipedia entries still waiting to be created was drawn up.¹⁶⁴ This initiative is explicitly motivated by the politics of remembrance, since the aim is to support certain perspectives on the recent past by providing reliable information.

(iii) The *Archivo Oral de la Memoria*

In the *Museo de la Memoria*, founded in 2006 (see 2.8.3), an *Archivo Oral de la Memoria* was created, in which around 70 filmed eyewitness interviews with victims of state repression and abuse, exiles and human rights activists, etc. are kept.¹⁶⁵ Access to this particular archive has to be specifically requested and justified. The idea behind the oral history archive stemmed from the conceptual preparatory work of the Argentinian initiative *Memoria Abierta*.¹⁶⁶

2.8 Memorial Sites

After the return to democracy, questions of commemoration and remembrance did not initially play a significant role. Rather, the focus was on freeing the prisoners, the return of exiles and the integration of victims back into everyday life. The search for the Disappeared and the fight against the amnesty law were also central.

As the *Ley de Caducidad* had been supported by the people's referendum, criminal investigations and the clarification of human rights violations initially seemed impossible. Thus *Memoria* gained in importance as a substitute for the *Verdad y Justicia* that the people were denied. Despite this, it took a long time for the first commemorative initiatives to come into being in Uruguay.

2.8.1 The *Memorial* for the Disappeared

In 1998, under the leadership of the *Madres y Familiares* (see 2.11.2), together with the *Intendencia* (city government) of Montevideo, a project commenced to create a memorial for the *Detenidos Desaparecidos*. Mariano Arana, the mayor of Montevideo, himself an architect from the *Frente Amplio* party, supported the project. Public fig-

163 Rodrigo Barbano, 'Wikipedia y derechos humanos: construyendo memoria en territorios digitales,' in *Servicio Paz y Justicia – SERPAJ Uruguay, Derechos Humanos en el Uruguay. Informe 2018* (Montevideo: SERPAJ, 2018), 293–296.

164 Accessed 11 April 2022, https://es.wikipedia.org/wiki/Wikipedia:Encuentros/Editat%C3%B3n_Wiki_DDHH_Uruguay_2018; accessed 11 April 2022, <https://derechoshumanos.wikimedia.org.ar>.

165 Martina Eva García, 'Archivo, Testimonios y Memorias en Uruguay,' *Aletheia* 10/20 (2020): 1–13, 5f., accessed 11 April 2022, <https://doi.org/10.24215/18533701e051>.

166 See Strassner's chapter on Argentina in this volume.

ures and representatives of civil society groups participated in the *Comisión Nacional Pro-Memorial*. The tender was issued in 1999, and a beautifully-situated area on the Bay of Montevideo was selected as the location.¹⁶⁷

The *Memorial* was opened on 10 December 2001, International Human Rights Day. The glass wall contains the names of the Disappeared, which was a cause of difficulty during its creation, as there was, and still is, no definitive list of all the names of the Disappeared.¹⁶⁸ The production costs of around 300,000 US dollars were covered by the city of Montevideo and through public donations.¹⁶⁹

2.8.2 *Marcas de la Memoria* – Traces of Memory

From 2005 onwards, on the initiative of the *Asociación Memoria de la Resistencia 1973–1985* (see 2.11.2), the trade union confederation PIT-CNT and the Faculty of Architecture, commemorative plaques were set in the ground in various places in Montevideo that are emblematic of resistance against the dictatorship. Public seating invites lingering at the sites. The project has been continuously expanded over the years. Some of the paths to these memorial sites are signposted so that individuals can follow the ‘footsteps of memory’.¹⁷⁰

2.8.3 The *Museo de la Memoria*

The *Museo de la Memoria*, created in 2006 and opened on International Human Rights Day 2007, is maintained by the City of Montevideo. It is housed in a stately home that had been owned by a senior member of the military from the end of the nineteenth century. The house is located near the secret detention and torture centre known as *300 Carlos – Infierno grande* (‘Great Purgatory’) in a district of Montevideo. The initiative for this museum came from civil society as well as from the city and government. Victims and human rights organizations such as *Madres y Familiares*, CRY SOL, SERPAJ and the human rights secretariat of the PIT-CNT were involved in the specific design.

In the entrance area one can see the concrete slab under which the remains of Fernando Miranda, found on a military site by forensic archaeologists in 2005, were

¹⁶⁷ See the following link for a visual representation, accessed 11 April 2022, <http://concursos.fadu.edu.uy/index.php/concursos/memorial-en-recordacion-a-los-detenedos-desaparecidos/>.

¹⁶⁸ Eugenia Allier Montaño, ‘Recordar para reparar: la imagen de los desaparecidos uruguayos en el “Memorial a los detenidos-desaparecidos”,’ *ILCEA – Revue de l’Institut des langues et cultures d’Europe, Amérique, Afrique, Asie et Australie* 26 (2016): 1–21, 9f., accessed 11 April 2022, <https://doi.org/10.4000/ilcea.3968>.

¹⁶⁹ Martínez, *Políticas de Memoria*, 49–51.

¹⁷⁰ Martínez, *Políticas de Memoria*, 51–53.

hidden.¹⁷¹ In addition to documents and photos, the museum mainly contains physical objects from the dictatorship period, video installations and sound recordings. The permanent exhibition consists of several rooms with different themes: the beginning of the dictatorship, resistance against the dictatorship, the prisons (mainly with exhibits from the *Libertad* prison and other prisons); the exile; the Disappeared; the return to democracy.¹⁷²

The museum is mainly visited by school classes, educators and influencers, but also by tourists and other interested parties. In addition to the permanent exhibition, the museum also regularly hosts relevant cultural events, workshops, lectures and film screenings, etc. The museum also provides touring exhibitions that are shown in other locations, especially inland. In 2018, the *Museo de la Memoria* had almost 40,000 visitors (including around 12,000 visitors to their touring exhibitions).¹⁷³

2.8.4 The Establishment of Memorials in Places Relevant to the Dictatorship

Across the whole country there were almost 100 places where people were imprisoned, ill-treated and tortured during the dictatorship. Often, these locations were (or are still) located on sites that were run by the armed forces. In many cases, however, these places and buildings have changed function over the course of time.¹⁷⁴

As a result of local initiatives, several of these sites of repression were converted into memorial sites over time. In some cases, small exhibitions were set up, but often only notices or information boards were erected.¹⁷⁵

2.8.5 The Memorials Act and the Memorials Commission (2018 Onwards)

In 2015, former inmates of the Detention and Torture Centre *300 Carlos – Infierno grande* and the *Museo de la Memoria* submitted a proposal to intensify and coordinate the activities of the different memorial sites. The steering group drew up a

¹⁷¹ Fernando Miranda's son, the lawyer Javier Miranda, is one of the leading activists in the MFDD and is an active member of the *Frente Amplio* political party.

¹⁷² Martínez, *Políticas de Memoria*, 53–61.

¹⁷³ Museo de la Memoria, *Informe 2019* (Montevideo: Museo de la Memoria, 2019), 14.

¹⁷⁴ Magdalena Broquetas, *Huellas de la repression: Identificación de centros de detención del autoritarismo y la dictadura (1968–1985)* (Montevideo: Centro Municipal de Fotografía, 2008); Mariana Risso and Manuela Abrahan, 'Desde el fondo del tiempo otro tiempo: Apuntes sobre el proceso de identificación y recuperación para la memoria de los espacios represivos del terrorismo de Estado uruguayo,' *Aletheia* 8/16 (2018), accessed 11 April 2022, <https://www.aletheia.fahce.unlp.edu.ar/article/view/ATHv8n16a06/10778>.

¹⁷⁵ Martínez, *Políticas de Memoria*, 61–68.

draft law that was passed by parliament, discussed for the first time in the Senate in 2017, and finally passed as law in 2018 as Ley No. 19.641.¹⁷⁶

This law regulates the erection of memorials in places ‘where people became victims of state terrorism or of illegitimate state action’. These memorials should serve as ‘publicly accessible places of recovery, for the creation and communication of memories’ and should represent ‘a homage (*homenaje*) and compensation’ for the victims and their communities (Art. 3).

The concept of ‘places of remembrance’ was defined in the law. It refers to physical places where (a) human rights violations were committed, or (b) where resistance against the dictatorship took place or (c) places that were created with the declared aim of preserving and passing on memories (e.g. memorials, museums etc.) (Art. 4).

The law provided for the establishment of a *Comisión Nacional Honoraria de Sitios de Memoria*, an honorary National Memorial Commission, which is based at the INDDHH and is composed of representatives from government agencies and ministries as well as civil society groups. This commission decides on the applications for the construction of memorials, ensures their functionality and promotes the establishment of local groups to look after the memorials, etc.

The law also provided for the creation of a *Red Nacional de Sitios de Memoria*, a national network of memorials by which the local memorial commissions are organized, and which exists to promote activities such as research, memorial work and human rights education.¹⁷⁷ A memorial site guide published by the *Grupo de Trabajo por Verdad y Justicia* (see 2.10.5) and the Human Rights Secretariat in 2019 lists 179 different memorial sites across the country.¹⁷⁸ They range from large-scale memorials such as the Memorial for the Disappeared or the *Museo de la Memoria* to small memorial plaques. There have been repeated attacks on and desecration of memorial sites in recent years. Most of the time, however, the motivations of those responsible remain unknown.

176 Manuela Abrahan and Mariana Risso, ‘Llena de hondos silencios: Los debates en torno a la aprobación de la ley de Sitios de Memoria Histórica del Pasado Reciente N° 19.641,’ in *Servicio Paz y Justicia – SERPAJ Uruguay, Derechos Humanos en el Uruguay: Informe 2018* (Montevideo: SERPAJ, 2018), 50–65.

177 Malena Laucero and Efraín Olivera, ‘Memoria y sitios de memoria: el pasado en disputa,’ in *Servicio Paz y Justicia – SERPAJ Uruguay, Derechos Humanos en el Uruguay: Informe 2019* (Montevideo: SERPAJ, 2019), 100–114.

178 *Guía de Lugares de Memoria del Pasado Reciente del Uruguay* (Montevideo: GTVJ/Secretaría de Derechos Humanos para el Pasado Reciente, 2019).

2.9 Commemorative Events

2.9.1 Commemorative Event in the Human Rights Movement: The *Marchas de Silencio*

The Uruguayan human rights movement regularly utilized and continues to use established memorial days such as 30 August (The International Day of the ‘Disappeared’) or 10 December (International Human Rights Day) to raise awareness through events and press releases. In addition, there are other dates when the human rights violations of the dictatorship and its victims are remembered in different ways. Of central importance here is 20 May, the day on which senator Zelmar Michelini and MP Héctor Gutiérrez Ruiz were murdered.

With the referendum against the *Ley de Caducidad* in 1989, the concerns of the human rights movement disappeared from the public consciousness for years. It was not until the mid-1990s that social awareness of these topics increased again. This was due not least to developments in Argentina, where a former officer gave an interview about his involvement in the ‘death flights,’ in which prisoners were thrown out over the Río de la Plata or into the open sea. These confessions drew new attention to the human rights violations of the dictatorship in Argentina, but also on the other side of the river: in Uruguay.

The charismatic Senator Rafael Michelini (*Frente Amplio*), son of the Uruguayan politician Zelmar Michelini, who was murdered in Buenos Aires in 1976, recognized the shift in public consciousness and made the most of it. On the 20th anniversary of the murder of his father and of Héctor Gutiérrez Ruiz, he called for a *Marcha de Silencio*, a silent march. He especially invited human rights organizations, trade unions, political parties and civil society organizations to attend. In order to avoid any (party) political monopolizing of the purpose of the event and of the event itself, he asked all attendees not to carry party flags or other political symbols. As it was to be a silent march, speeches would not take place. At the end of the *Marcha*, after singing the national anthem, the gathering should simply quietly dissolve. Everything should be avoided that would water down the simple but insistent demand for *complete* compliance with the amnesty law. Initially, it was not a question of questioning the Amnesty Act, but of criticizing its partial implementation, namely that all proceedings were discontinued (or not even started) without the state fulfilling its obligation under Article 4: the clarification of the fate of the *Desaparecidos*.

50,000 people took part in this first silent march, although the two traditional parties had advised against it.¹⁷⁹ This *Marcha* marked a turning point in Uruguay’s politics of the past: this silent accusation of the armed forces’ and the government’s

179 Aldo Marchesi, ‘¿“Guerra” o “Terrorismo de estado”? Recuerdos enfrentados sobre el pasado reciente uruguayo,’ in *Las conmemoraciones: Las disputas en las fechas ‘in-felices’*, ed. Elizabeth Jelin (Madrid: Siglo XXI, 2002), 101–147, 134–138.

policy of stalling made it clear that, for large parts of society, the process of coming to terms with the past had not come to an end with the referendum of 1989.

These *Marchas de Silencio* have been held annually since 1996. The motto of the first silent march was *Verdad, memoria, nunca más* (Truth, Memory, Never Again). In the following years, the topics of truth, clarification and remembrance also dominated.¹⁸⁰

A notable turning point can be seen in 2005, the year in which the left-wing *Frente Amplio* politician Tabaré Vázquez came to power. From that year on, the demand for *Justicia* appeared in the mottos of the silent march:

- *Para el pasado: verdad; en el presente: justicia; por siempre: memoria y nunca más* (2005; For the past: truth; For the present: justice; Forever: to be remembered and never repeated)
- *Basta de impunidad. Justicia para los crímenes de lesa humanidad* (2006; Enough with impunity. Justice for crimes against humanity)
- *Verdad y justicia. Derechos de todos. Responsabilidad del Estado* (2011; Truth and Justice. The Rights of All. Responsibility of the State)
- *En mi patria no hay justicia. ¿Quiénes son los responsables?* (2013; There is no justice in my homeland. Who are those responsible?)
- *Son memoria. Son presente. ¿Dónde están?* (2020 in virtual form because of the COVID pandemic; They are memory. They are present. Where are they?).¹⁸¹

The changes in the mottos chosen for each year show how the demands have expanded: from the modest demand for comprehensive implementation of the amnesty law to direct criticism of the government to the clear demand for the punishment of the perpetrators and for the amnesty to be lifted.

2.9.2 The Struggle for a Day of National Remembrance

Unlike in other countries, the Uruguayan military had not made the day of the coup a commemorative or even a public holiday. In 1975, however, 14 April was declared the *Día de los caídos en la lucha contra la sedición*, the ‘Day of the Fallen in the Fight against the Insurrection’. On that day in 1972, four members of the armed forces and security forces belonging to a death squad were murdered by the *Tupamaros*. On the same day, another eight *Tupamaros* were killed in response to the attack.

From 1975 to 1985, this day officially commemorated those who had died in the fight against subversion. In 1985, after the return to democracy, President Sanguinetti declared the day the *Día de los Caídos en la Lucha por la Defensa de las Instituciones*

¹⁸⁰ Alonso, Larrobla and Risso, *Avanzar a tientas*, 186 f.

¹⁸¹ Micaela Boiani et al., ‘Otro 20 de mayo,’ in *Servicio Paz y Justicia – SERPAJ Uruguay, Derechos Humanos en el Uruguay. Informe 2020* (Montevideo: SERPAJ, 2020), 41–44.

Democráticas, the ‘Day of the Fallen in the Struggle to Defend Democratic Institutions’ (Decreto 127/985). The military actually refused to accept this rededication and for years continued to celebrate the day of remembrance for those killed in the anti-subversion struggle.¹⁸² President Tabaré Vázquez abolished this memorial day in 2006, which caused the armed forces great annoyance. He announced that he would make suggestions for a more suitable day of remembrance. Since 2007, 19 June, the birthday of the national hero and ‘father of Uruguayan independence’ José Artigas, has been the *Día del Nunca Más* in memory of the victims of state terrorism and of guerrilla activities.¹⁸³ While President Vázquez was accompanied by high-ranking politicians at the laying of the wreath on the first official *Día del Nunca Más*, his deputy took over this task the following year. When José Mujica came to power, this day of remembrance quietly disappeared from the government’s official calendar.¹⁸⁴

2.10 Transitional Justice Institutions

In the context of Uruguayan ways of dealing with their authoritarian past, a large number of different methods were used: parliamentary investigative commissions, civil society information initiatives, a presidential truth commission, an investigative commission made up of forensic archaeologists, anthropologists and historians, etc. Those following the work of each institution were clear that the actual *number* of bodies set up to investigate the past was itself not a definitive mark of quality. More important was the extent to which the state had now fulfilled its moral and legal obligations to investigate and clarify the fate of the Disappeared, as set out in Article 4 of the *Ley de Caducidad*.

2.10.1 The Parliamentary Investigative Commission

Shortly after the return to democracy, the Chamber of Deputies set up two parliamentary investigative commissions on the initiative of the *Frente Amplio* and the *Blancos*: the *Comisión Investigadora sobre Situación de Personas Desaparecidas y los Hechos que la motivaron* (Investigative Commission on the Fate of the Disappeared and the Motivation behind it) and the commission to investigate the kidnapping and sub-

182 Eugenia Allier Montaño, ‘Lugar de memoria: ¿un concepto para el análisis de las luchas memoriales? El caso de Uruguay y su pasado reciente,’ *Cuadernos del CLAEH* 2/31 (2008): 87–109, 103f.

183 de Giorgi, ‘El “Nunca Más” uruguayo,’ 63–96.

184 A diez años, ‘¿nunca más el Día del Nunca Más? La conmemoración no figura siquiera en la agenda oficial de la Presidencia de la República,’ *El País*, 19 June 2017, accessed 11 April 2022, <https://www.elpais.com.uy/informacion/diez-anos-nunca-dia-nunca.html>.

sequent murder of the two Uruguayan parliamentarians Héctor Gutiérrez Ruiz and Zelmar Michelini in Buenos Aires in 1976.¹⁸⁵

Neither commission could count on the support of the executive, nor did they have investigative powers, so they had to rely on the cooperation of possible witnesses and, above all, of the armed forces. The results were therefore limited in range.¹⁸⁶ The findings of the commission investigating the murders of Héctor Gutiérrez Ruiz and Zelmar Michelini were not published, but, rather, were handed over to the military judiciary in May 1986. This crime was never solved and those responsible were not convicted.

The commission set up to investigate the fate of the Disappeared prepared a final report after seven months of work, but this was not made available to the public. The main results of the commission's work were presented in parliament.¹⁸⁷ The commission documented 164 'forced disappearances' from 1973 to 1978 (118 men, 38 women and 8 children). In 32 cases the individuals disappeared in Uruguay itself, but the majority of Uruguayans disappeared in Argentina (127), whereby testimonies could prove that Uruguayan forces were involved in these *desapariciones*.

The commission underlined the cruelty behind these acts and characterized them as 'crimes against humanity'. The report concluded that although the armed forces were involved in these crimes, it was not possible to assign responsibility to the armed forces or to claim that these acts represented an institutional practice. The report also states: 'It is not up to the commission to assess the documents submitted. Another state authority empowered to do so by the constitution will be the one that will definitively condemn the guilty.'¹⁸⁸ The commission recognized the limited scope of its own areas of responsibility, but spelled out that the judiciary was 'equipped with the appropriate technical and constitutional powers to swiftly and conclusively establish the facts, clarify the responsibilities and punish the guilty and will be given the appropriate technical and constitutional powers. Quickly and finally clarify the facts, assign responsibility and punish the guilty.'¹⁸⁹

Human rights organizations that had managed to get hold of the full report alleged that the published conclusions contradicted the facts gathered in the report, which led them to conclude that the commission had been subject to strong political interference.¹⁹⁰

The work of these two commissions can only be seen as a genuine contribution to the search for truth to a very limited extent. As their powers were restricted, the

¹⁸⁵ Marchesi, '¿"Guerra" o "Terrorismo de estado"?', 124–127.

¹⁸⁶ Felipe Michelini, 'La experiencia del Cono Sur en materia de comisiones de la verdad,' in *Verdad y Justicia: Homenaje a Emilio F. Mignone*, ed. Juan E. Méndez, Martín Abregú and Javier Mariezcurrena (San José de Costa Rica: Instituto Interamericano de Derechos Humanos, 2001), 173–206, 186f.

¹⁸⁷ Diario de sesiones de la Cámara de Representantes, 07 November 1985, 511–517.

¹⁸⁸ Diario de sesiones de la Cámara de Representantes, 07 November 1985, 516.

¹⁸⁹ Diario de sesiones de la Cámara de Representantes, 07 November 1985, 517.

¹⁹⁰ Straßner, *Die offenen Wunden Lateinamerikas*, 175.

results were not made available to the nation and it can be reasonably assumed that political interests influenced their work. Instead of forwarding the results of the commission's work to the judiciary, as the commission had requested, these were subsequently submitted to the President so that he could decide how to proceed. He then ordered the military prosecutor to investigate the incidents or actually decided that no investigations should take place. In both cases, however, the result was the same: there was no criminal investigation of the human rights violations.¹⁹¹

2.10.2 *Uruguay Nunca Más* – Civil Society's Attempted Search for Truth

After the adoption of the *Ley de Caducidad* led to the expectation that there would be no judicial clarification or criminal investigations, and after it became clear that the parliamentary commission of inquiry could (or would) not make a substantial contribution to the search for the truth, the human rights organization SERPAJ took up an idea that had already been around for some time: the creation of a Uruguayan *Nunca Más*. This was the title of the report of the Argentinian truth commission CONADEP, which, at the end of 1984, presented its report on the dictatorship's human rights violations, on the disappearance of people and on the systematic nature of the repressive system.¹⁹²

SERPAJ Uruguay wanted to produce a report on the systematic violations of basic human rights during the dictatorship and thus make a contribution to collective memory. The report was not drawn up by an official commission, but by a network of SERPAJ employees, lawyers and an external polling institute. SERPAJ could not fall back on extensive human or material resources, nor did they have access to official or military sources and archives. The investigation was therefore based on the documentation of human rights and victims' organizations, newspaper reports, testimonies and around 300 qualitative interviews.¹⁹³ In contrast to the Argentinian *Nunca Más* report, for example, the SERPAJ study did not focus exclusively on the Disappeared, but also focused on the imprisoned and the exiles.¹⁹⁴

The 442-page report is divided into three parts: the first part analyses the historical background; the second examines the various aspects of Uruguayan state terror-

191 Skaar, 'Uruguay,' 73.

192 Emilio Crenzel, 'Argentina's National Commission on the Disappearance of Persons: Contributions to Transitional Justice,' *The International Journal of Transitional Justice* 2 (2008): 173–191.

193 Straßner, *Die offenen Wunden Lateinamerikas*, 178.

194 Alberto Aldo Marchesi, "*Las lecciones del pasado*", *memoria y ciudadanía en los informes "nunca más"* (Informe final del concurso: Culturas e identidades en América Latina y el Caribe. Programa Regional de Becas CLACSO, 2001), 18–21, accessed 11 April 2022, <http://bibliotecavirtual.clacso.org.ar/ar/libros/becas/2000/marchesi.pdf>.

ism and human rights violations. The third part looks at the consequences of the repression for the population and for the exiles.¹⁹⁵

With an initial print run of 1000 and two other editions of the same size, the spread and impact of the report were rather limited.¹⁹⁶ Nevertheless, *Uruguay Nunca Más* is still one of the most in-depth works on human rights violations during the Uruguayan dictatorship.

The report was presented to the public in March 1989 – a few weeks before the referendum on the *Ley de Caducidad*. It was initially received with interest by the general public and by those who had an affinity for human rights, and its findings supported their arguments against the amnesty solution. The other side largely ignored the report in order to avoid wider public debate. When the amnesty law was confirmed by the referendum, the effect of *Uruguay Nunca Más* also evaporated. In the years that followed, there was widespread silence about the dictatorship's human rights violations. It was not until the change of government in 2000 that new opportunities for transitional justice opened up.¹⁹⁷

2.10.3 *Comisión para la Paz*

When the *Colorado* politician Jorge Batlle came into power on 1 March 2000, a new phase began in terms of dealing with the past. He recognized that – especially in view of the importance that the issue had acquired in the region – continuing the government's refusal to address the demands of the victims of the dictatorship was not appropriate.

Coming to terms with the past is necessary in order to 'seal peace among the Uruguayans' – according to the motto of his politics of the past. In April 2000, he announced a package of measures for 'national pacification' which would create a solution to the issue of the Disappeared and put in place compensation measures for former political prisoners and exiles. Batlle was also the first president to seek direct dialogue with victims and to meet with representatives from *Madres y Familiares*.¹⁹⁸

In August 2000, 15 years after the end of the dictatorship, the truth commission, *Comisión para la Paz*, was finally set up. Just a few years earlier, such a development would have been unthinkable due to the political situation and the preferences of the

¹⁹⁵ *Uruguay Nunca Más*.

¹⁹⁶ Luis Roniger, 'Olvido, memoria colectiva e identidades: Uruguay en el contexto del Cono Sur,' in *La imposibilidad del olvido: Recorridos de la memoria en Argentina, Chile y Uruguay*, ed. Bruno Groppo and Patricia Flier (La Plata: Al Margen/Bibliothèque de Documentation Internationale Contemporaine, 2001), 151–178, 164.

¹⁹⁷ Skaar, 'Uruguay,' 73.

¹⁹⁸ Carlos Marín Suárez and Azul Cordo, 'Políticas de memoria en Uruguay: entre el control, la acción y la pasión,' in *Servicio Paz y Justicia – SERPAJ Uruguay, Derechos Humanos en el Uruguay: Informe 2015* (Montevideo: SERPAJ, 2015), 39–47, 40.

elite. The commission, made up of six voluntary members, had four months to complete the task of collecting information to clarify the fate of the Disappeared. To try to meet this deadline, the commission members held talks with relatives and possible informants and evaluated the documentation from the human rights organizations and relatives. However, they were denied access to the military archives. President Batlle himself led the discussions with the military leadership.

The mandate was extended several times, so that, in the end, the work of the commission lasted over 32 months. The delays were due to the difficulties posed to investigations and the limited amount of time allocated to the task. In addition, the commissioners were all voluntary, were not investigative specialists and struggled to deal with the heavy demands of the role alongside their other jobs and obligations. In addition, the armed forces, who were the only ones who had in-depth information, showed little willingness to cooperate. Despite the extended period of time involved, the population took an active part in the work of the commission.¹⁹⁹

In April 2003, the *Comisión para la Paz* finally presented its results.²⁰⁰ As the commission itself had to admit, the results were simply the *verdad posible*, that is, the only *likely* truth that it could come to under the given circumstances. It could not reconstruct the fate of the Disappeared, but could only 'confirm the veracity of the facts which – although often denied – must now be recognized as part of official history' (No 42). The commission confirmed the disappearance of 26 Uruguayans in Uruguay; it was also possible to (partially) confirm that 126 Uruguayans in Argentina and a further 13 in other countries had disappeared. In the course of the commission's work, only the remains of one *Desparecido* were found. The commission reproduced the statements of the armed forces without adopting them: i.e. that the corpses were exhumed before 1984, the remains burned and the ashes dumped into the Río de la Plata (No 52).

The relatives of the Disappeared thanked the commissioners for their commitment and praised the fact that, for the first time, what had always been disputed was now officially recognized. The claim that the bodies could not be found, however, they rejected as politically and strategically motivated. The *Madres y Familiares de Uruguayos Detenidos Desaparecidos* (MFDD, Mothers and Relatives of the Detained Disappeared) demanded that the government make comprehensive reparations to the victims which, in addition to the complete clarification of the still-unanswered questions, must also include the punishment of the perpetrators. This demand represented a turning point in the attitude of the MFDD. Previously they had held back from making this demand – largely out of respect for the result of the 1989 referendum.²⁰¹ The organization had realized that the new social and political climate now allowed this sensitive question to be raised and with it the demands for justice. It did

199 Straßner, *Die offenen Wunden Lateinamerikas*, 200 f.

200 *Comisión para la Paz, Informe Final*. The information on the following quotations refer to the numbers in that document.

201 Straßner, *Die offenen Wunden Lateinamerikas*, 210 ff.

so without disrespecting the *Ley de Caducidad*, but by citing the latest developments in international case law on human rights issues, which provided for the guilty to be punished in the event of a violent disappearance despite existing amnesty laws.²⁰² For the MFDD, the work of the commission was the first step, but many others had to follow.

President Batlle, on the other hand, came to a different conclusion. To the astonishment of even the commissioners, he declared that once the commission's work was completed, the state's obligations to clarify the fate of the *Desaparecidos* in accordance with Article 4 of the *Ley de Caducidad* had been fulfilled. The human rights movement felt betrayed by the Batlle government, with which it had so far maintained a constructive relationship, as it was never mentioned in advance that the Truth Commission would draw a definitive line under the past.

It can be assumed that the government tried to minimize the level of conflict in order to avoid further difficulties with the military. The potential political costs of further investigations or even criminal proceedings against members of the armed forces appeared to be higher than the expected political benefits.

2.10.4 Historical Investigations and the Search for Truth: The Historians' Commission

Unlike his predecessors, the *Frente Amplio* politician Tabaré Vázquez, president from 2005 to 2010 after his historic left-wing election victory, felt that the duties of Article 4 of the *Ley de Caducidad* had not been adequately fulfilled. He commissioned a team of forensic archaeologists and anthropologists to carry out investigations and excavations on the site of *Batallón 13*, as well as in cemeteries and at other places where it was suspected that there were remains of the Disappeared.²⁰³

In addition to the *Grupo de Investigación en Antropología Forense* study, a Historians' Commission was set up to use historical means to review the years of the military dictatorship and to support the work of the forensic scientists. In 2005, an agreement was signed with the *Universidad de la República* in Montevideo.²⁰⁴ The 20 or so historians involved first worked on the documentation from the *Comisión para la Paz* and, on this basis, created datasets for each individual who had disappeared, into

²⁰² There are several possible arguments. The disappearance can be interpreted as a kidnapping that has continued to this day if the remains have not been found. If so, the offence is still in existence now and therefore falls outside of the period covered by the amnesty. Another option is to invoke international human rights norms that take precedence over national law.

²⁰³ *Investigaciones Arqueológicas sobre Detenidos Desaparecidos en la última dictadura cívico-militar*. Informes de Actividades, by Grupo de Investigación en Antropología Forense (GIAF Uruguay) (Montevideo: GIAF, 2006), accessed 11 April 2022, <https://www.gub.uy/secretaria-derechos-hu-manos-pasado-reciente/tematica/antropologicas>.

²⁰⁴ Larrobla and Larrobla, 'Las investigaciones históricas,' 1–11.

which the findings from other archives were then incorporated. Historians were given access to archives that were not accessible to the public (and in, some cases, are still not), such as the archives of the secret service, the interior and foreign ministries, the military health service and even the military justice system. Other public and private archives were also evaluated. On this basis, a five-volume documentation was created about the Disappeared, which was presented to the public in 2007. The report runs to well over 3,000 pages, which offer detailed information on each disappeared individual but also on the system of repression. There are many transcripts of archival material in these volumes.²⁰⁵ These historical works are also relevant for the criminal investigation of human rights violations.

While the study *Investigación Histórica sobre Detenidos Desaparecidos* focused on the Disappeared, the three volumes published in 2008 dealt with the dictatorship and with state terrorism itself, with further human rights violations and the consequences of repression for Uruguayan society. Here, too, there is an extensive compilation of original documents and archival materials that allow fresh insights into state terrorism.²⁰⁶

However, the work of the Historians' Commission did not end with the publication of the aforementioned volumes. Rather, additions and updates were and are constantly being made – especially when new archives are discovered or made accessible.²⁰⁷

2.10.5 The *Grupo de Trabajo por Verdad y Justicia* (Truth and Justice Working Group), 2015 – 2019

At the beginning of his second term in 2015, President Tabaré Vázquez set up a Truth and Justice Working Group, *Grupo de Trabajo por Verdad y Justicia* (GTVJ), in order to pursue the investigation of human rights violations. Its main task, mentioned in its founding decree, was 'to investigate the crimes against humanity' committed by state forces from 1968 to 1985. The work of the group should help 'to shed light on these events, drawing on historical truth and to promote justice in accordance with the rule of law and on the basis of international norms and standards of truth, justice, remembrance and guarantees that this will never happen again' (Decreto 131/015, Art. 1).

The group consisted of seven people who were known and valued for their personal integrity and their commitment to human rights. Among them were Felipe Michellini, María Macarena Gelman and two other representatives of the MFDD. The GTVJ received institutional support from the *Secretaría de Derechos Humanos para*

²⁰⁵ *Investigación histórica sobre Detenidos Desaparecidos*.

²⁰⁶ *Investigación histórica sobre la dictadura y el terrorismo de Estado*.

²⁰⁷ Larrobla and Larrobla, 'Las investigaciones históricas,' 5–8.

el Pasado Reciente (SDHPR). It was hoped that the fact that the GTVJ was affiliated with the government would speed up processes and thus advance the investigations.

Although the establishment of this working group was initially welcomed – not least because of the moral and political weight of its members – critical voices soon became apparent. The annual report of SERPAJ from 2016 says:

Something about this group reminds us of the *Comisión para la Paz*. 18 months have passed since it was founded, there has been little communication with citizens and even less information has been made public. We all know that untying the knots that hinder investigation is a difficult task. Nobody expects the truth in two days. But what we are demanding – and that is our civic duty – is greater transparency.²⁰⁸

It did actually take a long time before the GTVJ was organized and found its rhythm in working in partnership with the SDHPR. The group worked out a suggestion for improving compensation measures, maintained contacts with the relevant ministries, tried to gain access to the archives and coordinated the work of the forensic experts, etc.

In 2018, however, *Madres y Familiares* declared their withdrawal from the group. They justified this, amongst other things, by citing the fact that bureaucratic procedures had made the work effectively impossible. Their main criticism, however, was directed at the armed forces, whose refusal tactics had blocked the search for the Disappeared. More than that, the *Madres y Familiares* criticized the government itself for being reluctant to make use of its right to issue instructions and to force the armed forces to surrender the necessary files and information. As *Madres y Familiares* wrote in their press release:

The responsibility to investigate, ensure justice and find our loved ones was, is, and will always be a state responsibility – regardless of whether or not we as an organization participate in institutions or in working groups. Finding the Disappeared should not just be the fight of the relatives. It is the right of every citizen of a free country not to be kidnapped, not to be tortured, not to be murdered or to be disappeared.²⁰⁹

The decision of the most important victims' association to withdraw from the GTVJ and other obvious problems caused the group to be disbanded in 2019.²¹⁰ The human rights lawyer Pablo Chargoña and others refer to the 'obvious failure' of

208 Malena Laucero, 'Los Centros clandestinos: Núcleo duro de la Política Terrorista del Estado,' in *Servicio Paz y Justicia – SERPAJ Uruguay, Derechos Humanos en el Uruguay: Informe 2016* (Montevideo: SERPAJ, 2016), 84–99, 93.

209 Madres y Familiares de Detenidos Desaparecidos, *Comunicado a la opinión pública* (1 May 2018).

210 Grupo de Trabajo Por Verdad y Justicia, *Informe final* (Montevideo: GTVJ, 2019), accessed 11 April 2022, <https://www.gub.uy/secretaria-derechos-humanos-pasado-reciente/sites/secretaria-derechos-humanos-pasado-reciente/files/documentos/noticias/Informe%20final%20Grupo%20de%20Trabajo%20por%20Verdad%20y%20Justicia.pdf>.

this initiative.²¹¹ The tasks of the GTVJ were assigned to the *Institución Nacional de Derechos Humanos y Defensoría del Pueblo* (INDDHH). However, this is true only in part: according to its founding decree, the GTVJ still had the task of investigating ‘crimes against humanity’; Ley No. 19.822 only assigns to the INDDHH the task to take over the search for the Disappeared.

2.10.6 The Creation of a Central Human Rights Institution

For years, the victims of Uruguayan state terrorism had no central institutional point of contact. There was no specific person or body within the government to whom people who had been affected by state terrorism could turn. That only changed after the work of the *Comisión para la Paz* was completed. In its final report, it recommended the establishment of a successor secretariat (*Secretaría de Seguimiento*). From then on, this institution and its successor institutions served as points of contact for the victims.

(i) The *Secretaría de Seguimiento* of the *Comisión para la Paz*

Following the presentation of the results and recommendations of the *Comisión para la Paz*, Resolución N° 449/03 created the *Secretaría de Seguimiento* in 2003, the successor secretariat of the *Comisión para la Paz*. According to the commission’s recommendations, it was to be a purely administrative body to support live processes and proceedings.²¹² One of its tasks was to keep communication with the relevant authorities and institutions needed to clarify the cases of the Disappeared. It was also responsible for cooperating with the forensic scientists and historians of the *Universidad de la República* (see 2.10.4).

In 2006, President Vázquez declared in a resolution (Resolución No. 832/006) the end of the first stage of the *Secretaría*’s work with the completion of the tasks of the forensic archaeologists and anthropologists and the Historians’ Commission. The *Secretaría* should, however, continue to exist as an institution. Javier Miranda, an activist of the MFDD and himself the son of the Disappeared, was put in charge. In the following year, the *Secretaría* was given more resources to further clarify the fate of the Disappeared.²¹³

²¹¹ Pablo Chargoña, Leonardo Di Cesare and Fiorella Garbarino, ‘Después de la disolución del Grupo de Trabajo por Verdad y Justicia: Comentarios sobre la Ley No. 19.822 que comete la búsqueda de personas detenidas desaparecidas a la Institución Nacional de Derechos Humanos y Defensoría del Pueblo,’ in *Servicio Paz y Justicia – SERPAJ Uruguay, Derechos Humanos en el Uruguay. Informe 2019* (Montevideo: SERPAJ, 2019), 70–78, 71.

²¹² Comisión para la Paz, *Informe Final*, No. 74.

²¹³ Accessed 11 April 2022, <https://www.gub.uy/secretaria-derechos-humanos-pasado-reciente/institucional/creacion-evolucion-historica>.

In August 2011, as a result of the Inter-American Court of Human Rights' judgment against the Uruguayan state in the Gelman case (see 2.2.6), a *Comisión Interministerial* (inter-ministerial commission) was set up to ensure that the demands included in the judgement be fulfilled. This role was entrusted to the *Secretaría* on behalf of the President. The Ministry of Education and Culture (where the Justice Department is also located), the Ministry of Foreign Affairs and the Ministry of Defence (Resolución No. 450/011) were also involved.

During José Mujica's time in power, in 2013, the *Secretaría* was renamed *Secretaría de Derechos Humanos para el Pasado Reciente* (Human Rights Secretariat for the Recent Past – in contrast to the 'regular' Human Rights Secretariat, which deals with current human rights issues).

(ii) The *Secretaría de Derechos Humanos para el Pasado Reciente*

Resolución presidencial No. 463/013 transformed the *Secretaría de Seguimiento* into the *Secretaría de Derechos Humanos para el Pasado Reciente*. Compared to the initial organization, its area of responsibility had been expanded. It too had the task of receiving, analysing and collating information and testimonies; of conducting further research into the dictatorship's crimes against humanity and thus of contributing to historical clarification and legal proceedings. In this context, the *Secretaría* works closely with the judicial authorities and with the *Unidad Especial para causas de Derechos Humanos* (Special Unit for Human Rights Cases) of the Ministry of the Interior. In addition, the *Secretaría* was responsible for working with and supporting the *Grupo de Trabajo por Verdad y Justicia* (2.10.5).²¹⁴ The *Secretaría* is currently divided into four departments: archives, historical research, (forensic) anthropology, and communication and information.

(iii) The *Institución Nacional de Derechos Humanos y Defensoría del Pueblo* (INDDHH)

While the *Secretaría de Seguimiento* of the *Comisión para la Paz* and the *Secretaría de Derechos Humanos para el Pasado Reciente* were or are institutionally located within the executive, the INDDHH, created at the end of 2008, sits within the legislature. It acts autonomously and is not bound by precept. According to Ley No. 18.446, the *Institución Nacional de Derechos Humanos y Defensoría del Pueblo* (National Human Rights Institution and Ombudsman; INDDH) is responsible for the 'defence, promotion and full protection of human rights' as prescribed by the constitution and in international law (Art. 1). The INDDHH is based in a building in the centre of Montevi-

²¹⁴ Accessed 11 April 2022, www.gub.uy/secretaria-derechos-humanos-pasado-reciente/institucional/creacion-evolucion-Historica.

deo, which was previously used by the military secret service as a detention and torture centre during the dictatorship.

Although the focus of the INDDHH is on contemporary human rights issues (the implementation of international human rights agreements, human rights situations in prisons and psychiatric institutions, gender justice, etc.), the human rights violations of the military dictatorship also play a role.

The 2018 Ley No. 19.641 transfers responsibility for state terrorism memorials to the INDDHH. The *Comisión Nacional Honoraria de Sitios de Memoria* (National Voluntary Commission for Memorials) founded for this explicit purpose is both led by and based at the INDDHH.

After the failure of the *Grupo de Trabajo por Verdad y Justicia* (GTVJ, see 2.10.5), in September 2019 Ley No. 19.822 gave the INDDHH the task of continuing the search for the Disappeared during the dictatorship. In addition, the archives and documentation of the GTVJ were transferred to the INDDHH.

(iv) The *Oficina de Atención a las víctimas del terrorismo de Estado*

The *Oficina de Atención a las víctimas del terrorismo de Estado* (Office for the Care of Victims of State Terrorism) was created in October 2010 under the auspices of public health administration (Decreto No. 297/010) as the institution responsible for implementing medical compensation services. Its task was to coordinate access to medical and psychotherapeutic support measures for people who have rights under Ley No. 18.596, i.e. the Compensation Act 2009, or Ley No. 18.033, the law regulating the pension rights of those persons who were excluded from gainful employment for political reasons due to work bans, exile, etc.²¹⁵

2.11 Victims' Associations

2.11.1 The Uruguayan Human Rights Movement

The human rights movement in Uruguay took shape very late. Unlike in Chile, for example, where Church structures offered opportunities for human rights groups to meet and organize themselves, there was no such civil society flagship in Uruguay. The extensive control to which the military had subjected the country made it even more difficult to organize around these interests. It was only after the failed constitutional referendum in 1980 that there was first room for manoeuvre. In this context, the Jesuit Father Luis Pérez Aguirre founded the Uruguayan section of SERPAJ (*Servicio Paz Y Justicia*, Service for Peace and Justice) in 1981, inspired by the 1980

²¹⁵ Accessed 11 April 2022, <https://www.asse.com.uy/contenido/Oficina-de-Atencion-a-Victimas-de-Terrorismo-de-Estado-6634>.

Nobel Peace Prize laureate Adolfo Pérez Esquivel (SERPAJ-Argentina). With the establishment of this NGO, the public silence about the massive degree of military violence was broken for the first time. In view of this systemic violence, SERPAJ demanded that human rights be upheld.²¹⁶

The establishment of SERPAJ-Uruguay created a focal point for previously unarticulated interests in the field of human rights. Inspired by SERPAJ, for example, relatives of the Disappeared and relatives of the political prisoners formed themselves into groups. Other civil society organizations, such as trade unions, student and religious associations and professional associations, also adopted the demand for human rights protection and thus embedded the concerns of the human rights movement in society. After an attention-grabbing hunger strike, SERPAJ was banned in 1983, but activists continued to work in secret and inside other organizations until they were re-admitted in 1985. SERPAJ has developed into the most important human rights organization in the country, whose range of topics include not only dealing with the human rights violations of the dictatorship, but also children's rights, economic, cultural and social basic rights, freedom of the press, social security, human rights education, etc.

In 1984, the professional association of Uruguayan lawyers, with the support of SERPAJ, formed the *Instituto de Estudios Legales y Sociales del Uruguay* (IELSUR, Uruguayan Institute for Legal and Social Studies), which provided legal advice to victims of repression and their families and represented them in court. To this day, the IELSUR is one of the central institutions when it comes to legal questions of human rights. Many human rights lawsuits have since been prepared by the IELSUR and represented in court.

In the final years of the dictatorship, the human rights secretariat of the trade union federation PIT-CNT (*Plenario Intersindical de Trabajadores – Convención Nacional de Trabajadores*, General Assembly of Workers – National Workers' Convention) was set up, many victims of the dictatorship having also been active trade unionists.

In the following years, SERPAJ, IELSUR and the PIT-CNT were the central human rights organizations active in policy areas of the Uruguayan politics of the past.²¹⁷ The *Observatorio Luz Ibarburu* (OLI) was added as a further relevant body in 2012. The Human Rights Secretariat of the PIT-CNT had suggested this was created in order to observe and monitor compliance with and implementation of the decisions

²¹⁶ Ruderer and Strassner, 'Ecumenism in National Security Dictatorships'.

²¹⁷ In the broader context of the human rights movement, however, there are other civil society organizations that support the concerns of human rights and victims' organizations without becoming protagonists themselves. These include, for example, CIPFE (*Centro de Investigación y Promoción Francisca-na y Ecológica*), FUCVAM (*Federación Uruguaya de Cooperativas de Vivienda por Ayuda Mutua*), ASCEEP (*Asociación Social y Cultural de Estudiantes de la Enseñanza Pública*) or other student groups.

of the judgement of the Inter-American Court of Human Rights in the Gelman vs. Uruguay trial.²¹⁸

As a rule, the human rights organizations act together with the groups of victims of the dictatorship. In past decades it was mainly just the triad SERPAJ, IELSUR and MFDD that acted together. IELSUR contributed most of the legal expertise, SERPAJ situated the issues in the broader human rights context and, thanks to its extensive networks, was able to mobilize public support. The MFDD gave the cause a human face and moral integrity.

2.11.2 The Uruguayan Victims' Organizations

The repression that existed during the Uruguayan military dictatorship had a broad impact. In terms of numbers, the largest repressed group is comprised of former political prisoners and exiles as well as those affected by occupational and work bans. In view of the fate of the Disappeared and murdered, however, these people did not give their own victim status central stage. It was only towards the end of the 1990s that former political prisoners began to organize and demand their rights.

Overall, the Uruguayan victims of repression organized quite late. This is related to the all-encompassing repression and control that obtained predominated during the dictatorship and the lack of effective civil society structures under whose protection the victims could have come together. In addition, most of the Uruguayan victims disappeared outside the country's borders, mainly in Argentina, so that the relatives were more orientated towards Argentinian groups.²¹⁹

(i) *Die Madres y Familiares de Uruguayos Detenidos Desaparecidos (MFDD)*

It was only with the founding of SERPAJ that the relatives of disappeared Uruguayans succeeded in networking and organizing, so that over time the most significant victims' organization in Uruguay, the *Madres y Familiares de Uruguayos Detenidos Desaparecidos* (MFDD), emerged. This is still in existence today.²²⁰ Together with the numerically much larger groups of relatives of exiles and political prisoners, the MFDD

²¹⁸ Accessed 11 April 2022, www.observatorioluzibaburu.org.

²¹⁹ Therefore there are groups with names like the *Madres y Familiares de Uruguayos desaparecidos en Uruguay, Argentina y Paraguay*; *Madres y Familiares de Uruguayos desaparecidos en Argentina*; *Familiares de Uruguayos detenidos-desaparecidos en Uruguay*; *Agrupación de Familiares de Uruguayos Desaparecidos en Europa* (each with variants on those names).

²²⁰ Carlos Demasi and Jaime Yaffé, eds., *Vivos los llevaron... Historia de la lucha de Madres y Familiares de Uruguayos Detenidos Desaparecidos (1976–2005)* (Montevideo: Trilce, 2002).

formed an important part of the mobilization against the regime.²²¹ With the end of the dictatorship, the liberation of the political prisoners and the return of the exiles, the other victims organizations dissolved, leaving only the MFDD. After the defeat in the referendum, the group lost meaning and purpose and finally stopped their regular protest marches in 1992. Only as the situation changed, beginning at the end of the 1990s, did the MFDD regain importance as an important protagonist. From the beginning they worked closely with IELSUR and especially SERPAJ, in whose premises they were housed for a long time.

The MFDD as an organization, but also the members of the group, are very well respected by the public. In contrast to some protagonists of the Argentinian human rights movement, they are usually very moderate in tone, but all the clearer in content. Due to their proximity to the *Frente Amplio*, the group succeeds time and again in placing its concerns in the political and parliamentary debate.

(ii) HIJOS Uruguay

With the new dynamic that defined the confrontation with the past in the Río de la Plata area from the mid-1990s, the children of the Uruguayan Disappeared organized for the first time and founded the HIJOS Uruguay group – similar to the parallel group in Argentina. Around half of the 50 or so children of those who disappeared from Uruguay were involved in the group.²²² Together with the MFDD and the relevant human rights organizations, they are primarily committed to securing criminal proceedings for human rights violations and to maintaining an appropriate culture of remembrance.

(iii) Groups of Former Political Prisoners (*Memoria para Armar* and CRYSQL)

For years there was no union of former political prisoners in Uruguay. At the beginning of 1997, some female former prisoners got together and founded the network *Memoria para Armar* ('Piecing Together our Memories'). Its aim was to reconstruct the memories of what they had experienced in prison together. Around 300 people took part in this process. Working groups were formed on various topics.²²³ The re-

²²¹ The relatives of the political prisoners and exiles did not organize themselves until 1982 and 1983, respectively. After their release or return, these groups supported reintegration and eventually were disbanded.

²²² Diego Sempol, 'HIJOS Uruguay: A 20 años de un ensayo de memoria generacional,' *Cuadernos de Aletheia* 2 (2016): 53–60; Diego Sempol, 'HIJOS Uruguay: Identidad, protesta social y memoria generacional,' in *El pasado en el futuro: los movimientos juveniles*, ed. Elizabeth Jelin and Diego Sempol (Buenos Aires: Siglo XXI, 2006), 185–212.

²²³ Jimena Alonso and Fabiana Larrobla, 'Memorias femeninas en el Uruguay pos-dictadura,' *Aletheia* 5/9 (2014), accessed 11 April 2022, http://www.memoria.fahce.unlp.edu.ar/art_revistas/pr.6417/pr.6417.pdf, 1–14, 4–8.

sults were published in several volumes from 2001 onwards.²²⁴ *Memoria para Armar*, whose activities met with great public response and sympathy, has developed into an integral part of the Uruguayan human rights movement in recent years.

In 2000, the former male prisoners also organized themselves under the name CRYSQL (*Centro de Relaciones y Soluciones Laborales – Asociación de los Ex Presos Políticos*, Centre for Labour Relations and Solutions – Association of Former Political Prisoners). The association, which primarily wanted to react to the precarious financial and professional situation of many former prisoners, developed to represent the broader interests of former political prisoners. One of the most important concerns is their public recognition as victims of serious human rights violations. Initially, this group was exclusively made up of men, but over time it also opened up to women.

2.12 Measures in the Educational System

The educational system was of great strategic relevance for the military during the dictatorship. They regarded it as a breeding ground for subversion. At the same time, they recognized the importance of schools to convey values such as ‘order’ or ‘security’ and to give students what they considered to be an appropriate worldview in the context of the ideological controversies of the Cold War.²²⁵

Just one year after the return to democracy, dealing with the recent past became a topic within the education system. The Uruguayan dictatorship was addressed within a larger context (for example, in the context of a broader topic like ‘The World After 1945’, there was the topic ‘Uruguay: Social Tensions, Political Crisis and the Collapse of Institutions’).²²⁶ The inclusion of the recent past in the curriculum repeatedly caused controversy in the following years. The question was raised as to whether these subjects could even be adequately dealt with in class. They feared that teaching would become ideological and warned that no objective perspective was possible on these topics. The teachers also complained that there were no reliable materials available for class preparation.²²⁷

224 *Memoria para Armar, uno: Testimonios coordinados por el Taller Género y Memoria ex-Presas Políticas* (Montevideo: Senda, 2001); *Memoria para Armar, dos: ¿Quién se portó mal? Selección de Testimonios coordinados por el Taller Género y Memoria ex-Presas Políticas* (Montevideo: Senda, 2002); *Memoria para Armar, tres: Selección de Testimonios coordinados por el Taller Género y Memoria ex-Presas Políticas* (Montevideo: Senda, 2003).

225 Natalia Vitalis, *Educación Secundaria, censura cultural y dictadura: La expulsión de los enemigos: docentes y textos* (= Avances de Investigación) (Montevideo: Facultad de Humanidades y Ciencias de la Educación, Universidad de la República, 2011).

226 Mariana Achugar, Amparo Fernández and Nicolás Morales, ‘(Re)presentando el pasado reciente: la última dictadura uruguaya en los manuales de historia,’ *Discurso & Sociedad* 5/2 (2011): 196–229, 203.

227 Achugar, Fernández and Morales, ‘(Re)presentando el pasado reciente,’ 196–229, 203.

With the change of government in 2005 and the inauguration of the first left-wing government, many groups had high hopes that the dictatorship would now become the subject of more in-depth classroom discussion. However, actual developments fell short of these expectations. The reasons for this lie not only in political reservation or in the persistence of educational institutions, but also in the difficulty of integrating the events of the 1970s and 1980s into Uruguay's historical self-image (Uruguay as the 'Switzerland of Latin America', with a welfare state, the tolerance of an immigrant nation, liberalism, etc.).²²⁸

2.13 Coming to Terms with the Past through the Media

In general, Uruguay – especially when compared to other Latin American countries – has a solid and reputable media landscape. Their relationship with the state has been repeatedly referred to as 'gentle' or 'nice'.²²⁹ Since cases of corruption became public in the mid-1990s, the media have been increasingly aware of their role as the 'fourth pillar of democracy'.

The media did not play a prominent role as regards coming to terms with the past and human rights violations. They reported on current developments and debates. The political tendencies of the individual newspapers and media were also reflected in the style of reporting.²³⁰ The left-wing liberal weekly *Brecha* regularly reported on human rights issues.

In contrast to other countries, investigative journalism played a subordinate role in Uruguay in connection with coming to terms with the past. Individual authors such as Virginia Martínez wrote books on the subject that reached a larger audience.²³¹

228 Federico A. Cavanna and Luis Fernando Cerri, 'Enseñanza de historia reciente en Uruguay: pasado y laicidad en el juego de la identidad,' *Archivos de Ciencias de la Educación* 3/3 (2009): 99–112, accessed 11 April 2022, http://www.fuentesmemoria.fahce.unlp.edu.ar/art_revistas/pr.4085/pr.4085.pdf; Carlos Demasi, 'La transmisión del pasado traumático: Enseñanza de la dictadura y debate social en Uruguay,' *ILCEA – Revue de l'Institut des langues et cultures d'Europe, Amérique, Afrique, Asie et Australie* 26 (2016): 1–14, accessed 11 April 2022, <https://doi.org/10.4000/ilcea.3959>.

229 José Pedro Díaz, 'Uruguay: Medios de comunicación y Estado/gobierno: Descubriendo la cenicienta,' in *¿Por qué nos odian tanto? Estado y medios de comunicación en América Latina* (Bogotá: Centro de Competencia en Comunicación para América Latina and Friedrich Ebert Stiftung, 2010), 245–261, 251.

230 Antonio Pereira, 'Análisis de los informativos televisivos durante el proceso de aprobación de la ley de caducidad,' *Cuaderno de Historia* 9 (2012): 125–149.

231 Virginia Martínez, *Los fusilados de abril ¿Quién mató a los comunistas de la 20?* (Montevideo: Ediciones del caballo perdido, 2002).

2.14 Coming to Terms with the Past through Art

Since film funding was increased in the mid-2000s and the *Frente Amplio* governments attached greater importance to the inter-related themes of dictatorship, human rights and memory, a large number of films have been made on these topics. Since 2004, between two and five films about the dictatorship have been released almost every year (with a total national production of between five and 17 films). The majority of these are documentaries; feature films are not as common. While the documentaries are similar in terms of design, montage and aesthetics, the feature films deal with different aspects of the military dictatorship in fictional form, even though a number of films explicitly address specific cases.²³² Examples include the feature film *Zanahoria* (director: Enrique Buchichio, 2014) about the search for the Disappeared, and *Migas de pan* (director: Manane Rodríguez, 2016) about the experiences of abuse and (sexual) violence against women imprisoned during the dictatorship.

In the numerous documentaries, but also in the feature films, different stages of the dictatorship (from the events leading up to the dictatorship to questions around remembrance and dealing with the dictatorship) are thematized. There are also pieces that deal with certain characters or motifs: experiences of violence and imprisonment; exile, the Disappeared and the search for them; the children of the Disappeared;²³³ or the theme of resistance against the dictatorship.

The time of dictatorship was and is also a theme in the performing arts and theatre. A number of works deal with experiences of authoritarianism and individual and collective trauma. In view of the societal silence around the experience, the theatre wanted to break the pact of silence, question the official narratives and save fragments of memory. In quantitative terms, the number of works and performances is manageable, although there has been an increased interest in these topics in recent years.²³⁴

Eduardo Galeano and Mario Benedetti are undoubtedly among the most famous Uruguayan writers of the second half of the twentieth century. Both had to leave the country during the dictatorship and returned after 1985. Confrontation with the dictatorship was a focus of writing and journalism for them both. Other authors also

²³² Jorge Fierro, '¿Otra película sobre la dictadura? El relato del pasado reciente en el cine uruguayo,' *Brecha* (15 May 2020), accessed 11 April 2022, <https://brecha.com.uy/otra-pelicula-sobre-la-dictadura/>.

²³³ Beatriz Tadeo Fuica, 'Presencias y ausencias: Uruguay y los documentales sobre hijos (des)aparecidos,' *Cine Documental* (2015): 169–196.

²³⁴ Roger Mirza and Gustavo Remedi, eds., *La dictadura contra las tablas: Teatro uruguayo e historia reciente*, (Montevideo: Biblioteca Nacional, 2009); Gustavo Remedi, ed., *Otros lenguajes de la memoria: teatro uruguayo contemporáneo e historia reciente*, (Montevideo: Ediciones Universitarias, 2017); Roger Mirza, 'Memoria y representación en la escena uruguaya: 1968–2013,' *Nuestro Tiempo* 19 (2014), 5–42.

focused on the experiences of the dictatorship in their works, like Mauricio Rosencof, Tessa Brida, who lives in the USA, and Mario Delgado Aparáin.

Uruguay's cultural creators also participate in many ways in the cultural life of Argentina and, in particular, of Buenos Aires.

3 Stocktaking: Successes and Failures of Transitional Justice in Uruguay

Until the year 2000, the prognosis of democratization researcher Samuel P. Huntington seemed to be true for Uruguay: 'In new democratic regimes, justice comes quickly or it does not come at all.'²³⁵ The issue of human rights violations received a lot of attention after the dictatorship, but there was no justice (in the sense of sanctioning those responsible and compensating the victims). The period before the referendum represented a high point in the social and political dealings with the past. However, after the amnesty law was confirmed by the referendum, the issue disappeared from the social and political agenda until it returned in the late 1990s in a form that meant that politics could no longer refrain from finding ways to come to terms with the problems of the past.

The case of Uruguay shows how much the personal convictions of state presidents can shape the politics of the past. It also shows how influential veto actors like the armed forces can be when it comes to a pacted transition process.

At the same time, the case of Uruguay shows the importance of the human rights movement and of victims' organizations. The UN Special Rapporteur Pablo de Greiff wrote in his report to the UN General Assembly in 2014:

It has been the victims of these serious human rights violations and their family members – sometimes organized into associations – who have promoted and continue to promote, tirelessly and with admirable dedication, the implementation of initiatives for truth, justice, reparation and guarantees of non-recurrence. The Special Rapporteur notes that the lack of progress in some of these areas [...] have proved extremely exhausting for the victims and their family members.²³⁶

In the case of Uruguay, it should be stressed that it was the victims with the support of the human rights movement who drove forward the processes of coming to terms with the past. Although the *Frente Amplio* governments in the years 2005–2020 showed a significantly greater openness to the concerns of the victims, it should nevertheless be remembered that the human rights movement had to fight against government resistance for a long time. With this in mind, when accounting for Uruguay's

²³⁵ Samuel P. Huntington, *The Third Wave: Democratization in the Late Twentieth Century* (Oklahoma: University of Oklahoma Press, 1991), 228.

²³⁶ de Greiff, *Report of the Special Rapporteur*, No. 6.

politics of the past, a distinction must also be made between the level of the system and the level of the victims.

Transition to Democracy and Civil-Military Relations

The return to democracy in Uruguay came through a pacted and negotiated transition, in which concessions were made to the armed forces and securities were guaranteed. It can be seen as a success that the handover of power to a democratically elected civilian government worked smoothly and without relapse into authoritarianism and that Uruguay was able to resume its democratic tradition. The post-authoritarian governments managed to avoid civil-military tensions or were able to resolve them discreetly. Uruguayan democracy has the reputation of being one of the most stable democracies in the region, revealing the excellent quality of its democracy.²³⁷

These successes were, of course, bought with the fact that the armed forces' spheres of interest were barely touched and that the majority of the crimes of the military dictatorship went unpunished. The *Ley de Caducidad* itself also makes fundamental inquiries about constitutional practices and – even more – about basic democratic principles such as the separation of powers. With this amnesty law, at least in dictatorship-related human rights issues, the separation of powers was undermined, since the judiciary was in fact controlled by the executive.

Clarification and the Search for Truth

There are probably few countries that have used so many different methods in dealing with their past as Uruguay. These numerous attempts at clarification are certainly related to the half-heartedness with which they have been undertaken. The parliamentary investigative commission was not given sufficient powers, neither was the presidential truth commission. They were also was not given the resources they needed. The other initiatives were also not adequately resourced. Even though Uruguay is a small country, it is questionable whether tasks in institutions such as the *Comisión para la Paz*, the *Grupo de Trabajo Verdad y Justicia* etc. can be carried out by volunteers in addition to all their normal tasks, even with heartfelt commitment.

The experiences of other countries shows that it is more successful (and quicker) to set up a commission equipped with the appropriate competencies and resources at an early stage, rather than undertake numerous half-hearted attempts at clarifica-

²³⁷ Uruguay, for example, achieved twelfth place in the evaluation of the quality of democracy (Democracy Matrix 2019) as the 'best' Latin American country – directly behind Spain and ahead of Austria, Great Britain, France and Italy, which were ranked 20 to 23 respectively, accessed 11 April 2022, <https://www.demokratiematrix.de/ranking>. The Bertelsmann Transformation Index (BTI) also gives Uruguay top marks for statehood, political participation, rule of law and stability of democratic institutions, accessed 11 April 2022, <https://www.bti-project.org/de/index/politische-transformation.html>.

tion. Of course, this presupposes that the government also wants the truth about the past to be made public. Trying to deal with the past in this way can generate social expectations and political pressure to act that the government must then be able to deal with. When the extent and systematic use of human rights violations become evident, it becomes more difficult for the government to justify impunity and amnesty laws.

In terms of the end result, Uruguay has nevertheless managed to combine the findings of the various institutions set up to give clarity to an overall picture that is accepted by the vast majority of the population. Through this process, the functioning of the military regime has been largely disclosed, the existence of the past human rights violations and the responsibility for them, which lay with the armed forces, are not in doubt. The number and names of those who disappeared have been determined fairly precisely (even if there are still variations in detail). However, less success has been enjoyed in precisely quantifying the numbers of victims of imprisonment, torture and exile. But here, too, there is a wide-ranging social consensus on the established facts of these human rights violations. These advances in the search for truth in turn increased pressure on those in power to end the practice of impunity. The judicial investigations that followed contributed to clarifying the human rights violations.

In Uruguay, through a long and fragmented process, it has been possible to reveal and establish a *global* truth about the dictatorship. With regard to the actual truth about the Disappeared, however, efforts have been less successful: in the vast majority of cases it is still unclear what happened to the Disappeared and where their remains are. The code of silence assumed by the military and those involved in the specific operations is still in effect. For its part, the government does not seem to see any suitable way of getting the armed forces to cooperate and to release information and archives.

Criminal Proceedings

It was over two decades before the first sentence was given in Uruguay concerning the crimes of the dictatorship. For all those years (and beyond), the victims and their lawyers fought against the refusal of the various governments to allow judicial investigations (regardless of possible convictions). On a systemic level, the amnesty solution has contributed to creating a negative peace, i.e. the absence of armed violence, possible for years.²³⁸ However, it is questionable whether allowing judicial investigations would have endangered democracy at any point and whether the argument of ethical responsibility would always weigh equally here. The government blocked all criminal proceedings, following the Werberian Ethics of Responsibility. For the government, it was justifiable to suspend moral conviction in order to ach-

²³⁸ Skaar, 'Uruguay,' 83.

ieve political stability. Yet, while this argument had a certain applicability in the direct aftermath of the transition from dictatorship, it seems dubious that it retained the same plausibility in the years that followed.

In any case, it was the victims who had to constantly fight for their rights. For years, the state failed to meet its legal and moral obligations to investigate and compensate for the human rights violations it was responsible for. Although this could possibly be justified at a systemic level, it is difficult to understand at the level of those actually affected.

As a result of the efforts of the victims, their lawyers and the human rights movement, a number of perpetrators were finally brought to justice, albeit with a significant time lag (although many spent their sentences under house arrest because of their advanced age).

Even if it is difficult to prove empirically, the theory is understandable that the impunity that has dominated for years (and in some cases still persists) has weakened trust in the rule of law. It is also noticeable that mistreatment and torture by police officers, i.e. those unpunished crimes that quantitatively made up the majority of the dictatorship's human rights violations, are still a problem in Uruguay today.²³⁹

Compensation and Reparations

There is also a clear time lag in Uruguay with regard to reparations programmes. After the necessary regulations had been made in an initial phase, it took almost three decades before the first financial compensation payments were made legally binding. It would then take even more years before the first comprehensive compensation measures were introduced under the *Frente Amplio* government, which included financial compensation as well as moral reparations, recognition of suffering and injustice, as well as policies relating to remembrance. Finally, different groups of victims could be taken into account in the reparations programmes.

Politics of Commemoration

For years, there was no public commemoration policy in Uruguay. When remembrance policy measures were made, these mostly followed the initiative of civil society.²⁴⁰ Only the *Frente Amplio* governments deliberately adopted the angle of *Memoria* in the context of their policies for interpreting and compensating for the past, passed corresponding laws and set up specific bodies to implement them. But here, too, it was civil society (and especially the human rights movement) that kept memories of the dictatorship alive.

²³⁹ Skaar, 'Uruguay,' 83.

²⁴⁰ Marín and Cordo, 'Políticas de memoria,' 39f.

Societal Dealings with the Dictatorship

In Uruguay it was possible to establish a broad consensus on the events of 1973 to 1985. Unlike in other countries, nobody seriously questions the human rights violations committed at the time. Even if the human rights issue played a subordinate role for years after the 1989 referendum, today this is a topic that interests the entire population. At the same time, however, the almost identical results of the two referenda on the *Ley de Caducidad* show that there is no consensus on the need for a comprehensive reappraisal of policy as regards the period of dictatorship.

Conclusion

The Uruguay case is instructive in many ways. Finally, a few aspects should be briefly mentioned that can be clearly seen in the example of Uruguay.

The *form of system transition* determines the possibilities of coming to terms with the past. In the case of Uruguay, this was a transition in which the armed forces still had an equal say in their role in the post-authoritarian power structure. Impunity for members of the armed forces and security forces can be seen as part of this pact.

The *timing of the transitional justice process* is of great importance. As Samuel Huntington said, action will either be taken immediately or not at all. In the case of Uruguay, this is only partially true because, at a later date, the human rights movement did again succeed in building up such pressure to act that the government had to react. It has been shown, however, that certain past political measures become more and more difficult as time goes on (e.g. clarifying the fate of the Disappeared, punishing the perpetrators, etc.). Other measures, on the other hand, such as commemorative and remembrance policies, even under other conditions, only come into effect once a certain time has lapsed after the events.

The case of Uruguay also shows that the *role of victims' organizations and of the human rights movement* cannot be overestimated. Basically, it is due to these groups that the subject of human rights came onto the social and political agenda in the context of the pacted transition and in the years that followed. These groups not only had to gather support for their cause among the general population, but often also had to fight against government resistance.

The fact that this resistance varied in strength underscores the *importance of the decision-makers in the executive*. It became clear how the elite's priorities shifted during the different governments, and thus past political initiatives were either adopted or blocked. In the case of Uruguay, it became apparent that the left-wing governments that ruled the country from 2005 onwards had an *intrinsic* motivation to press ahead with coming to terms with the past. This *intrinsic* motivation was not evident in the previous governments (of Sanguinetti and Lacalle). During these years, however, there was no *extrinsic* motivation for the governments to tackle this sensitive issue: neither civil society, the human rights movement nor other international actors succeeded in generating the necessary pressure to act. At the same time,

the outcome of the 1989 referendum made it clear that this topic would not win any elections.

Jorge Batlle's presidency can be seen as a transitional period. He was generally more willing than his predecessors to try to deal with the dictatorial past. However, with the rise of the human rights movement and with increasing international pressure, the political costs associated with continuing to block measures were becoming higher, so he began to change tack.

Transitional justice processes *follow specific phases*. At the beginning, the focus is often on pressing questions (such as release from prison, return from exile, etc.) as well as the need for clarification and punishment. Questions of compensation and reparation often follow. As time progresses, questions of commemorative politics and then historical politics come to the fore. It is also often the case that certain measures – even if they were required from the start – only become possible later. Generational aspects certainly play an important role here. This was evident in cases like Uruguay or Argentina in relation to their criminal prosecutions.

In Uruguay, the Gelman case clearly shows the *importance of international legal systems*. After all possible measures had been taken in the country, Gelman turned to the Inter-American Court of Human Rights. On the one hand, he was able to generate political pressure to act in Uruguay; on the other hand, he succeeded with the lawsuit in obtaining a verdict against the Uruguayan state and thus stimulated new political impulses for dealing with the country's past.

