

CHALLENGING IMPUNITY IN DOMESTIC COURTS: HUMAN RIGHTS PROSECUTIONS IN LATIN AMERICA

Jo-Marie Burt

In April 2009, the Peruvian Supreme Court convicted former president Alberto Fujimori (1990-2000) of grave violations of human rights and sentenced him to 25 years in prison. In 2010, former Uruguayan president Juan Maria Bordaberry was convicted to 30 years in prison for violating the constitutional order and for a number of murders and forced disappearances that occurred during his government (1973-76). In Argentina, after the Supreme Court declared the amnesty laws of the 1980s to be unconstitutional, a new wave of trials opened up, resulting in the convictions of several hundred former state agents for rights abuses and crimes against humanity, including forced disappearance, torture, and rape.

These successful prosecutions for cases of grave human rights violations illustrate a remarkable shift in a region long characterized by institutionalized impunity, that is, formal or informal mechanisms imposed or supported by state policies that guarantee that those responsible for grave violations of human rights go unpunished. These prosecutions are remarkable also because of the historic weakness of Latin American judiciaries, the notorious absence of political will on the part of ruling elites to hold those responsible for such crimes accountable, and the belief, even among some progressives, that human rights prosecutions were not viable, perpetuated conflict, or undermined the opportunity for reconciliation. Yet the combination of a global shift in norms in favor of accountability and persistent grass-roots activism in pursuit of truth and justice oftentimes in spite of tremendous odds and unlikely victories, has opened new spaces, at least in some parts of Latin

America, for renewed efforts to prosecute those accused of ordering or carrying out grave violations of human rights.

Latin America is indeed at the forefront of the “justice cascade” identified by Ellen Lutz and Kathryn Sikkink a decade ago—the global trend toward the promotion of accountability for those who perpetrated, ordered, or otherwise authorized grave violations of human rights, war crimes, and crimes against humanity¹. This article will review the trajectory of four countries that have made significant advances in human rights prosecutions in the past decade: Argentina, Chile, Uruguay and Peru.

However, it is important to note that the record of human rights prosecutions in Latin America is mixed at best. Some countries such as Argentina and Chile have moved forward significantly in recent years, while other processes that seemed to be promising, such as that of Peru, have stagnated. Still other countries, such as Brazil and El Salvador, remain seemingly impermeable to the justice cascade.

1. Transitional Justice: The Latin American Experience

In an important article outlining the evolving phases of transitional justice since World War Two, international law scholar Ruti Teitel suggests that this diffusion of human rights norms and the resulting shifts in global responses to atrocity has generated a new phase of transitional justice distinct from the two earlier phases she identifies². The first phase, associated with the Nuremberg and Tokyo trials after the end of the war, saw the establishment of international tribunals to prosecute Nazi and other Axis power officials for crimes against peace, war crimes, and crimes against humanity. The conditions that led to these postwar prosecutions were not easily replicable, Teitel argues, and in the following years, criminal prosecutions for grave violations of human rights or other crimes against humanity did not become standard practice in the face of violent or abusive regimes, at least partly due to the advent of the Cold War. While there were a few instances of prosecutions—newly democratic governments in Greece and Argentina successfully prosecuted the

1 Ellen Lutz and Kathryn Sikkink, “The Justice Cascade: The Evolution and Impact of Foreign Human Rights Trials in Latin America”, *Chicago Journal of International Law* 2(1) (2001): 1-34. See also Naomi Roht-Arriaza, *The Pinochet Effect: Transnational Justice in the Age of Human Rights* (Pittsburgh: University of Pennsylvania Press, 2005).

2 Ruti Teitel, “Transitional Justice Genealogy”, *Harvard Human Rights Journal* 16 (2003): 69-94.

generals who ruled over those nations for long periods in the 1970s and 1980s—the more common response was either to ignore past abuses and move forward, often after the establishment of sweeping amnesty laws (as Brazil and Uruguay sought to do following long periods of military rule in the 1970s and 1980s), or to establish truth commissions to investigate abuses but without any accompanying effort to prosecute (as in Chile, El Salvador, Guatemala in the 1990s). In either case prosecutions were eschewed as a policy option, presumably because the negotiated nature of the transitions from military rule made such prosecutions difficult if not impossible (as in Chile, El Salvador or South Africa in the 1990s). Pragmatism was the general rule in such transitional democracies, as denoted by the now well-known phrase of Chilean truth commissioner José Zalaquett, whose famous formulation urging political rulers in such tentative situations to seek justice “within the realm of the possible” fueled a binary construction holding that truth was an acceptable alternative form of justice³. Indeed, for some practitioners and scholars, truth was touted as a *preferred* form of justice since it presumably reduced conflict and promoted reconciliation⁴.

Such formulations were sometimes disrupted, however, by actions taken independently of state actors to promote accountability through other means, often in arenas that transcended the nation-state. Prompted by globalization, the diffusion of human rights norms, local and transnational human rights activism, and evolution in international law, the 21st century has seen the rise of a new phase marked by the massification and normalization of transitional justice mechanisms⁵.

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- 3 José Zalaquett, “Balancing Ethical Imperatives and Political Constraints: The Dilemma of New Democracies Confronting Human Rights Violations”, in Neil Kritz, Ed., *Transitional Justice: How Emerging Democracies Reckon with the Past* (United States Institute of Peace, 1992). As Teitel (2003, *Ibid.*) notes, the feasibility of prosecutions was limited by the political context of the transitions; for example, the still powerful military and the ongoing political role played by Pinochet in Chile’s transition made it extremely risky to attempt trials for human rights abuses. In the face of such dilemmas many countries opted to forgo prosecutions in favor of other mechanisms of transitional justice, including truth-seeking and reparations. These were often accompanied by amnesty laws which in some cases were put in place by the previous regime, as in Chile and Brazil, and in others were put in place by the transitional democratic regime, as in Uruguay and El Salvador. Roht-Arriaza (*Ibid.*) explores some of these cases in detail.
 - 4 Robert I. Rotberg & Dennis Thompson, Eds., *Truth v. Justice: The Morality of Truth Commissions* (Princeton University Press, 2000).
 - 5 T. Risse, S. C. Roppe, & K. Sikkink, Eds., *The Power of Human Rights: International Norms and Domestic Change* (Cambridge, UK: Cambridge University Press, 1999).

While criminal prosecutions are by no means the norm in this new and third phase of “globalized justice”, to use Teitel’s phrase, they are more frequent than they have been in the past, as Lutz and Sikkink have argued⁶. A new international regime recognizing the obligation of states to investigate and punish human rights violations has been enshrined through the work the International Criminal Tribunals for the former Yugoslavia and Rwanda⁷; the detention of Chilean dictator General Augusto Pinochet in London in 1998 and the affirmation of the principle of universal jurisdiction that the extradition process entailed⁸; and the signing, also in 1998, of the Rome Treaty that led to the creation in 2002 of the International Criminal Court⁹. The result has been energized efforts across the globe—at the international, national, and local levels—to devise mechanisms to secure accountability for war crimes, crimes against humanity, and grave violations of human rights.

In Latin America, in the face of the unresponsiveness of domestic judicial institutions to investigate and punish grave violations of human rights committed during authoritarian governments and/or in the context of internal armed conflicts, human rights organizations, survivors and relatives of victims of human rights abuses, and other civil society groups sought to use international entities, especially the Inter-American system of human rights protection, to challenge amnesty laws, push regional governments to investigate, prosecute and punish grave human rights violations, and provide reparations to victims¹⁰. The growing responsiveness of the Inter-American system, particularly of the Inter-American Commission for Human Rights (IACHR) and the Inter-American Court for Human Rights, which began to hand down decisions upholding the state’s duty to prosecute grave violations of human rights, the right of

6 Lutz and Sikkink, “The Justice Cascade”, *Ib.*

7 See for example William Schabas, *The UN International Criminal Tribunals: The Former Yugoslavia, Rwanda and Sierra Leone* (Cambridge: Cambridge University Press, 2006). Other discussions take a more critical vis-à-vis these *ad hoc* institutions *cf.*, Mark Drumbl, *Atrocity, Punishment and International Law* (Cambridge: Cambridge University Press, 2007).

8 Roht-Arriaza (*Ib.*) provides a thorough account of the Pinochet arrest and its impact.

9 See for example, Benjamin Schiff, *Building the International Criminal Court* (Cambridge: Cambridge University Press, 2008).

10 An excellent overview of such efforts in the region is provided in the edited volume, *Victims Unsilenced: The Inter-American Human Rights System and Transitional Justice in Latin America* (Washington D. C.: Due Process of Law Foundation, 2007).

access to justice for victims, as well as the right to truth, was especially important in supporting local efforts in the region to prosecute and punish perpetrators of grave violations of human rights¹¹. In particular, as we shall see, the 2001 decision in the *Barrios Altos* case in which the IACHR determined that amnesty laws whose purpose was to shield perpetrators from prosecution violated the American Convention on Human Rights and were therefore null and void helped galvanize domestic efforts to challenge such laws, opening possibilities for criminal prosecution in many parts of the region. But, as will be argued in the sections below, it was the decided efforts of civil society groups to push forward a pro-accountability agenda, often at great risk and in the face of enormous odds, that helped create conditions for human rights prosecutions in the cases under study. Certainly the larger political context plays an important role, as will be discussed below: variations in political support for criminal prosecutions of human rights cases can play a fundamental role, but as the cases here suggest, elite efforts to terminate accountability prosecutions were challenged domestically and internationally by domestic civil society groups whose advocacy on behalf of truth and justice has powerfully reshaped debates about accountability and human rights practices in Latin America.

2. Argentina: From Accountability to Impunity and Back Again

Today Argentina is leading the world in domestic human rights prosecutions. Since the Argentine Supreme Court declared the amnesty laws of the 1980s were unconstitutional, dozens of trials have gotten underway, and to date more than 300 perpetrators have been convicted, including iconic figures of military repression such as Alfredo Astiz. But there have been dramatic shifts in Argentina in the state's criminal prosecutions policy—from full state support for the trial of the military *juntas* in the early to mid-1980s; to the backtracking on this policy and the promulgation of amnesty laws and pardons to stop the prosecutions process and placate those opposed to it, primarily the military; to the relaunching of criminal prosecutions primarily after 2005, when the Supreme Court upheld previous rulings declaring that the amnesty

11 Douglass Cassel, "The Inter-American Court of Human Rights", in *Victims Unsilenced: The Inter-American Human Rights System and Transitional Justice in Latin America* (Washington D. C.: Due Process of Law Foundation, 2007).

laws and pardons were unconstitutional. How can we understand these dramatic policy fluctuations?

Prompted by the massive social protests led by the Mothers of the Plaza de Mayo against the military regime for its systematic policy of forced disappearances, the new democratic government of Raúl Alfonsín established one of the world's first truth commissions. The Sabato Commission, as it came to be known, had the express purpose of gathering evidence that would then be used in trials against the principal architects of the military's systematic policy of repression. Truth-seeking was inextricably linked to the search for justice, a remarkable departure from the policy adopted by Argentina's neighbors, Brazil and Uruguay, who were engaged in transition processes at around the same time. In those two countries, the official policy was denial and silencing, accompanied by sweeping amnesty laws protecting rights abusers from criminal prosecution¹².

Alfonsín and his advisors deemed that some form of accountability was necessary, not only from a human rights standpoint, but also to affirm the core tenets of liberal democracy¹³. By affirming the rule of law and the principle of equality before the law, trials would help reestablish the credibility of Argentine state and consolidate democratic institutions¹⁴. At the same time, Alfonsín and his advisors believed that it was impossible to hold to account all those responsible for such acts, since torture and disappearance were not the work of a small, specialized unit (as it had been in Nazi Germany) but rather was spread widely throughout the armed forces. It was determined that the top generals of the *juntas* who ruled during the military government would be tried as the intellectual authors of a systematic policy of repression that resulted in massive human rights violations¹⁵. In 1985, after the truth commission finished its

12 There were important societal efforts to achieve truth and justice in Brazil and Uruguay as documented in Lawrence Weschler, *A Miracle, A Universe: Settling Accounts With Torturers* (Chicago: The University of Chicago Press, 1990).

13 Carlos Santiago Nino, *Radical Evil on Trial* (New Haven, CT: Yale University Press, 1998).

14 See also Jaime Malamud-Goti, *Game without End: State Terror and the Politics of Justice* (University of Oklahoma Press, 1996) and Elizabeth Jelin *et al.*, *Vida cotidiana y control institucional en la Argentina de los 90* (Buenos Aires: Nuevohacer, 1996). Jelin finds that the presumption of Alfonsín and his advisors was correct: the trial of the members of the military *juntas* contributed to building legitimacy for the judiciary as institution.

15 This policy reflects the notion put forth by Hannah Arendt in her study of the trial of Adolph Eichmann, in which she suggests that in cases of massive and coordinated

work and documented nearly 9,000 disappearances, the government held trials against nine of the *junta* leaders, five of whom were convicted and given lengthy prison sentences¹⁶. Some human rights organizations were critical of this policy, arguing that all perpetrators should be put on trial and held accountable before the law.

These convictions, along with the growing number of civil suits that were being brought against mid- and low-ranking members of the armed forces by Argentine citizens and human rights organizations, prompted a series of military uprisings. Alfonsín—also under assault by a ballooning economic crisis marked by massive hyperinflation—backed down from his maverick human rights policy, passing a series of decree laws that granted effective immunity from prosecution to mid- and low-ranking officers (the Full Stop Law, followed by the Due Obedience Law). This was followed by a sweeping amnesty law passed by Alfonsín’s successor, Carlos Menem, as well as the pardoning of the five *junta* leaders who had been tried and convicted in 1985¹⁷.

Despite the amnesty laws, human rights organizations continued to press the accountability agenda, in some instances turning to international bodies to support their claims. In 1995, Carmen Lapacó, Emilio Mignone and Marta Vázquez presented a legal complaint demanding to know the truth about what happened to their children, who had been disappeared during the dictatorship. Given that the cases could not move forward in the Argentine judiciary, they brought their case to the Inter-American system, eventually leading to an amicable agreement in which the Argentine state acknowledged the relatives’ right to truth, and promised to convene “truth trials” to that effect in federal courts. The public “confessions” of a few perpetrators also contributed to intensified public debate over these issues as well¹⁸.

state violence, the farther one moves from the hand of the individual who actually committed the crime, the more likely one was to find the individual(s) truly responsible for the crime. See Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil* (New York: Penguin Books, 1994).

16 Initially the government had proposed to hold the trial of the *juntas* in military courts, but their stalling resulted in the transfer of the trial to a civilian court.

17 See Nino, *Radical Evil on Trial*.

18 This was particularly the case with the public ‘confession’ of navy captain Adolfo Scilingo, which was published in interview form in Horacio Verbitsky’s *The Flight*. For a gripping comparative analysis of the impact of public confessions by perpetrators, see Leigh Payne, *Unsettling Accounts: Neither Truth nor Reconciliation in Confessions of State Violence* (Durham, NC: Duke University Press, 2008).

In the meantime, survivors, relatives of victims and human rights lawyers had sought tirelessly to find ways around the amnesty laws. In early 1998, a judge accepted the argument put forth by human rights lawyers that the amnesty laws and presidential pardons did not cover the crime of baby kidnapping, and ordered the arrest of General Jorge Videla, one of the leading *junta* leaders who had been convicted in 1985 and pardoned in 1990, and others. As we shall see, this would have a transformative effect on accountability debates in Argentina that would reverberate throughout the region, especially in the Southern Cone. So too would the arrest, several months later, of former Chilean dictator Augusto Pinochet in London.

Human rights lawyers had a clear vision of the need to overturn the amnesty laws in order to allow criminal trials in cases beyond baby kidnapping to move forward¹⁹. In 2000, lawyers from the Center for Legal and Social Studies (CELS) presented a criminal complaint before the courts soliciting the repeal of the amnesty laws in an ongoing trial involving the illegal kidnapping of an eight-month-old girl, Claudia Victoria Poblete. Two members of the Federal Police, Julio Héctor Simón and Juan Antonio del Cerro, were being prosecuted for this crime. CELS argued that the trial was based on a fundamental contradiction: the judges could investigate and punish the crime of the girl's kidnapping, but not the disappearance of her parents, since the perpetrators were protected by the amnesty laws in the case of the latter crime but not the former. CELS argued that based on international law—which according to the Argentine Constitution was part of domestic law—these were crimes against humanity and therefore were not subject to statutes of limitation, could not be amnestied, and should be prosecuted according to Argentine law²⁰. The judge presiding over the case, Gabriel Carvallo, ruled in favor of CELS, declaring that the amnesty laws were invalid and not applicable in this case. Carvallo noted that the amnesty laws interfered with the Argentine state's international duty to investigate and prosecute crimes against humanity²¹. Two years

19 Interview with author, Gastón Chillier, Director, Centro de Estudios Legales y Sociales (CELS), Buenos Aires, June 2007.

20 CELS, “Pedido de inconstitucionalidad de las leyes de punto final y obediencia debida - Caso Poblete”, <http://www.cels.org.ar/agendatematica/?info=detalleDocF&ids=11&lang=es&ss=41&idc=592>, no date.

21 Valeria Barbuto, “Procesos de justicia transicional: Argentina y el juzgamiento de graves violaciones a los derechos humanos”, Informe para la Fundación para el Debido Proceso Legal. On file with author.

later, in 2003, the Argentine Congress declared that the amnesty laws were unconstitutional.

That same year, Néstor Kirchner, a member of the Peronist party, was elected president. Kirchner inherited a country devastated by economic collapse and a deep rift in public confidence vis-à-vis politicians and the political system in general. In his efforts to rebuild citizen confidence in public institutions, Kirchner, of the generation of Peronists who had been savagely repressed during the military dictatorship, adopted a strong pro-accountability stance. He pushed quickly for a new government policy on human rights that incorporated human rights prosecutions as its centerpiece, but also included other initiatives such as the recuperation of former detention centers and their transformation into memory spaces and the vetting of government officials linked to the dictatorship. While Kirchner's leadership was important, the prior mobilization of human rights and other civil groups challenging impunity domestically and at the international level, and the growing responsiveness of Argentine institutions to these demands, was at the core of these shifts.

The watershed moment came in 2005, when the Supreme Court declared the amnesty laws unconstitutional, thus opening the doors for renewed efforts to achieve retributive justice in Argentina. (In 2007 the Supreme Court also declared the presidential pardons unconstitutional, leading to the re-arrest of several military officers who had been prosecuted in the 1980s and then freed by Menem's presidential pardon). More than 1,500 alleged perpetrators are facing prosecution, with 229 convictions to date²². Though human rights advocates have criticized the absence of a coherent state policy vis-à-vis criminal investigations, there have been notable improvements. For example, the first trial to lead to a conviction (in 2006) focused on just two murders, when the accused perpetrators were allegedly responsible for hundreds of killings and forced disappearances. Increasingly prosecutors are accumulating cases so that multiple victims and perpetrators are encompassed in the same legal process²³. For example, in the trial that recently culminated in the paradigmatic case of the ESMA (a military school that was used during

22 Data from the online blog maintained by the Center for Legal and Social Studies (CELS): <http://www.cels.org.ar/wpblogs/>, accessed on November 4, 2011. Several of the sentences handed down since 2005 are available on the Argentine Judiciary's website, Centro de Información Judicial: <http://www.cij.gov.ar/lesa-humanidad.html>.

23 Personal communication, Gastón Chillier, Lima, Peru, July 22, 2011.

the dictatorship as clandestine military detention center, which held an estimated 2,000 political prisoners, most of whom were disappeared), the case incorporated 85 victims and 18 defendants. The 5th Federal Oral Court emitted its sentence in October 2011, issuing convictions for 15 of the 18 defendants for the crimes committed at ESMA, which the judges characterized as crimes against humanity²⁴. Among those convicted were iconic figures of the dictatorship's repressive apparatus including Alfredo Astiz and Antonio Pernias, who along with ten others were sentenced to life in prison (three others were sentenced to 18-25 years in prison, while three were absolved, though they remain in prison as they have indictments in other cases).

A confluence of factors contributed to the advance of criminal prosecutions for human rights violations in Argentina. Reforms at the level of the judiciary were clearly important, as was the ability of lawyers, prosecutors and judges to use international law as well as rulings by the Inter-American Court of Human Rights in their legal judgments. The political support of criminal trials by the Kirchner administration was also of fundamental importance. But it is arguable that none of these factors alone would have propelled human rights prosecutions forward. Without the determined efforts of survivors, relatives of victims, and human rights organizations to hold accountable those responsible for grave human rights violations via domestic criminal trials, it is unlikely that this would have been the outcome of the accountability debate in Argentina. Victims' associations and human rights groups sought out alliances with a gamut of international actors and organizations, and turned to international bodies such as the Inter-American system for human rights protection, to support and advance this agenda. But it was the domestic efforts, which remained fairly constant over time, and which adapted to new challenges and circumstances, that drove the process. No doubt their success and failure in promoting an accountability agenda also coincided with shifts in the political opportunity structure: a relatively favorable scenario for prosecutions at the time of transition, given the military in disgrace after its defeat in the Malvinas conflict; to an unfavorable scenario throughout the 1990s as conservative political, economic and military sectors regrouped to resist accountability efforts and successfully imposed mechanisms of impunity; and then, to a new moment of accountability

24 For information on this case, see the CELS website: <http://www.cels.org.ar/esma/>.

after the election of the Kirchners (Néstor Kirchner in 2003 and his wife Cristina in 2007 and 2011)²⁵.

3. Chile and Uruguay: Impunity and “Late Accountability”

3.1. Chile

In Chile, after 17 years of dictatorial rule under General Augusto Pinochet (1973-1990), the new democratic government of Patricio Aylwin created a truth commission to investigate the abuses that occurred under the military dictatorship. Fearful of a military backlash, the Aylwin government did not challenge the 1978 amnesty law decreed under Pinochet’s rule to prevent punishment for the worst crimes of the dictatorship. The Rettig commission, as it was known, investigated extrajudicial killings, disappearances, and cases of torture leading to death (but not torture on its own). It produced a report documenting the murder and disappearance of some 3,000 Chilean citizens, and recommended the implementation of monetary and symbolic reparations programs for survivors of the dictatorship. Impunity, however, remained in tact. Though there were trials investigating cases of forced disappearance and murder, the amnesty law was routinely applied, shielding perpetrators from effective punishment. The one trial that did culminate in a successful conviction—that of the head of Pinochet’s secret police Manuel Contreras for the 1976 car-bombing murder of Orlando Letelier in Washington, D. C.— was due largely to U.S. pressure²⁶.

While the arrest of Pinochet in London in October 1998 would play a galvanizing role in Chile’s accountability process, there were important shifts in local dynamics that reveal ongoing efforts by human rights and victims’ groups to promote an accountability agenda in 1997 and early 1998. Cath Collins describes the work of Chilean human rights and opposition groups toward this end in relation to what they perceived

25 During interviews conducted in 2007 and 2010, several informed observers suggested that Kirchner supported the human rights agenda in an effort to build new constituents after the devastating economic meltdown of 2000 and the extreme political instability that followed. In any case, both Néstor and Cristina Kirchner have been staunch supporters of the criminal justice process.

26 Orlando Letelier, a former Chilean Foreign Minister under Salvador Allende, who was killed, along with his American colleague, Ronni Moffit, in the suburbs of Washington, D. C. in a car bomb planted by Pinochet regime operatives. Manuel Contreras, head of Pinochet’s secret police, was tried and convicted of this crime.

as unique opportunity to challenge Pinochet just as he was retiring as commander in chief of the armed forces and was about to take up his seat in the Senate as senator for life²⁷. In early 1988, two different criminal complaints were lodged against Pinochet. The first, in January 1998, was presented by family members of the victims of “Caravan of Death” military operation²⁸, followed a few weeks later by a complaint lodged by the Communist Party for the murder of party leaders during the dictatorship. The tactic, as Collins notes, was more political than legal in intent, and its promoters doubted its effectiveness. They were especially concerned upon learning that both cases had been assigned to Juan Guzmán, a conservative judge who, by his own admission, had toasted with champagne the 1973 *coup d’état* that put Pinochet in power with friends and family²⁹. Guzmán surprised all parties when he allowed the complaint and launched an investigation. A few months later, in September 1998, a Supreme Court ruling was handed down accepting the thesis put forth by human rights lawyers that in the case of forced disappearance, since no body had yet been found or identified, amounted to an ongoing, continuous crime and that as a result, the 1978 amnesty law is not applicable. This ruling was subsequently upheld in another case and became key to forward movement in human rights prosecutions in Chile³⁰.

The arrest of Pinochet in London in October that year, and the efforts to extradite him to Spain to stand trial on charges of crimes against humanity, electrified efforts to bring those responsible for human rights violations to justice in Chile³¹. Collins reports that between October and December 1998, over 300 criminal complaints were lodged against Pinochet and others. Judge Guzmán successfully processed Pinochet three times for various human rights crimes, though Pinochet and his lawyers ably manipulated the legal system resulting in long delays. In the end, Pinochet died, in December 2006, without having stood trial for the crimes of which he stood accused³². Nevertheless the Pinochet affair

27 Cath Collins, “Human Rights Trials in Chile During and After the ‘Pinochet Years’”, *International Journal of Transitional Justice* 4:1 (2010), pp. 67-86.

28 See Patricia Verdugo, *Chile, Pinochet, and the Caravan of Death* (Lynne Reinner, 2001).

29 See Guzmán’s declaration in the documentary film, *The Judge and the General* (2008) produced by Elizabeth Farnsworth & Patricio Lanfranco.

30 This draws on the insightful analysis presented in Collins (2009), *Ib*.

31 See Roht-Arriaza, *The Pinochet Effect*, and Collins, “Human Rights Trials in Chile”.

32 Interview with author, Judge Juan Guzmán, Lima, August 18, 2008.

forced open the issue of ongoing impunity for human rights violations in Chile, despite the efforts of successive governments to lay the issue to rest. As a direct result of this, the government created new spaces of discussion with civil society groups and the armed forces, including the *Mesa de Diálogo*, and later established a second truth commission (the Valech Commission) to examine cases of political prisoners and torture, which had not been included in the first truth commission's mandate.

The international attention the Pinochet affair brought to Chile's failure to prosecute perpetrators of grave human rights violations made it increasingly difficult for the Chilean government to ignore civil society's growing demands for accountability. But, as Collins notes, it was the prior work of human rights groups that laid the groundwork for the opening of criminal prosecutions in Chile³³. The election of Michele Bachelet to the presidency—a former political prisoner whose father, a member of the Chilean armed forces, was killed by the Pinochet dictatorship—also generated a new set of opportunities for criminal trials of those accused of human rights violations. Though the Bachelet government did not promote trials as state policy, it was also more receptive to the accountability agenda. Though the 1978 amnesty law remains on the books, judges have stopped applying it in cases involving crimes against humanity. More than 1400 criminal prosecutions are underway or have been completed in Chile, the majority involving crimes of forced disappearance or extrajudicial execution. Between 2000 and May 2011, 773 members or former members of the state security forces have been processed and/or sentenced for human rights crimes, with 245 firm sentences (confirmed by the Supreme Court) to date³⁴.

3.2. Uruguay

After twelve years of military rule, Uruguay returned to democracy in 1985. Like Chile, Uruguay's transition from authoritarianism was

33 Cath Collins, "State Terror and the Law: The (Re)Judicialization of Human Rights Accountability in Chile and El Salvador", *Latin American Perspectives* 35:5 (2008): 20-37.

34 Boletín Informativo No. 14 del Observatorio de Derechos Humanos, Universidad Diego Portales (June/August 2011), pp. 2-3. Rights observers note, however, that the Supreme Court has applied a number of "attenuating circumstances" that result in the effective reduction of sentences and sometimes means that those convicted of human rights violations actually never serve a day in prison. See *Informe Anual Sobre Derechos Humanos en Chile 2011*, Observatorio de Derechos Humanos, Universidad Diego Portales, <http://www.derechoshumanos.udp.cl>

a negotiated one. The armed forces remained powerful, and the conservative government that took power in 1985 promoted a policy of “forgive and forget” regarding past atrocities committed by state actors. Unlike neighboring Argentina, whose new government adopted the human rights agenda as its own and promoted both a truth commission and criminal trials against the members of the *juntas* that ruled during the military dictatorship, the conservative government that led Uruguay’s transition did not consider a truth commission desirable. In the face of the absence of a state policy on human rights, individual survivors and relatives of victims and human rights organizations began filing complaints in court. In 1986, as the first trial of a military officer accused of human rights abuses was to begin, the then minister of defense, retired General Hugo Medina, announced that the accused officer would not appear before the court. Presumably to avert a constitutional crisis, the Uruguayan Parliament passed the *Ley de Caducidad de la Pretensión Punitiva del Estado*, known as the Expiry Law, which ended the state’s efforts to criminally prosecute members of the security forces accused of human rights violations³⁵. Critics charged that the law was essentially a blanket amnesty law designed to shield perpetrators of human rights abuses from criminal prosecution and called for its repeal. Government leaders argued instead that the Expiry Law was the moral equivalent of the amnesty that had been granted to political prisoners, including former *guerrilla* leaders, just after the transition to democracy (many of whom had been arbitrarily detained, held without due process, and brutally tortured for many years), and was essential to securing democratic stability³⁶.

Almost immediately a group of legislators presented a bill challenging the law’s legality, but it did not prosper. Human rights groups presented a recourse of unconstitutionality to the Supreme Court, but the Court upheld the law’s legality by a split vote of 3-2 in 1988. In the meantime, a broad coalition of left-wing politicians, social movement and labor leaders, human rights activists, survivors of the dictatorship, and family members of victims joined forces to challenge the amnesty law through a referendum. After a massive grass-roots effort to obtain the

35 The law’s full title is the *Ley de Caducidad de la Pretensión Punitiva del Estado*.

36 These debates are outlined by Lawrence Weschler, *A Miracle, A Universe: Settling Accounts with Torturers* (University of Chicago Press, 2nd ed., 1998).

signatures of 25% of registered voters, the referendum was held in April 1989. The initiative lost by a slim margin³⁷.

With the path to seeking accountability for human rights violations thus closed domestically, human rights organizations lodged a complaint to the Inter-American Commission of Human Rights (CIDH). The Commission stated in its 1992-3 report that Uruguay's Expiry Law violated a series of human rights treaties and obligations and should be repealed³⁸. The Uruguayan state ignored this recommendation. In the meantime, the vote upholding the amnesty law seemed to paralyze Uruguay civil society, and there was little movement on the issue in the following years.

This began to change however towards the end of the decade, partially in response to the new wave of efforts to achieve justice and accountability in neighboring Argentina. Uruguayan civil society, especially survivors, relatives of victims, human rights organizations, trade unions, and some sectors within the Frente Amplio, a coalition of left-wing parties, began to mobilize again around the issue of impunity. Senator Rafael Michelini (son of slain Senator Zelmar Michelini) and the Association of Mothers and Relatives of the Disappeared convoked a March of Silence on May 20, 1996 to demand truth, justice, and memory, to massive response.

At around the same time, one case in particular galvanized public opinion: that of the missing granddaughter of Argentine poet Juan Gelmán. Gelmán's son and daughter-in-law were among those disappeared in the 1970s during the Argentine military dictatorship, but there was credible evidence that Gelmán's daughter-in-law, who was pregnant at the time of her detention, had been illegally brought to Uruguay and gave birth there to a baby girl. The baby was handed over to a military family and her mother was killed. Gelmán's public search for his missing granddaughter,

37 Jo-Marie Burt, *"El pueblo decide": A Brief History of the Referendum Against the Impunity Law in Uruguay* (Montevideo: Servicio Paz y Justicia, 1989).

38 Comisión Interamericana de Derechos Humanos, *Informe Anual de la Comisión Interamericana de Derechos Humanos 1992-1993*, Informe No. 29/92, March 12, 1993. It would be nearly a decade before that the Inter-American Court of Human Rights ruled on the question of amnesty laws. In 2001, in the *Barrios Altos* case, the Court ruled that amnesty laws whose intention is to prevent criminal prosecutions for grave violations of human rights violate the American Convention on Human Rights and lack legal effect. In a subsequent ruling the Court determined that this determination was valid universally. See Douglas Cassel, "The Inter-American Court of Human Rights", in *Victims Unsilenced: The Inter-American Human Rights System and Transitional Justice in Latin America* (Washington, D. C.: Due Process of Law Foundation, 2007).

Macarena, captivated Uruguayan society, contributing to the decision of then-President Jorge Battle to establish a governmental body to investigate the fate of the disappeared.

The Peace Commission, as it was named, was controversial: some were satisfied that the state had finally acknowledged responsibility for the disappearances, while others remained critical of its limited reach (it did not investigate other crimes including assassinations, arbitrary detention, and the widespread use of torture of political prisoners) and challenged some of its findings³⁹. Nevertheless, there were some important breakthroughs. In 2000, Macarena Gelman was identified, to great public impact, particularly since President Sanguinetti had earlier denied her existence. The discovery of another missing child, Simón Riquelo, who had been taken away from his mother Sara Méndez when he was a month old when she was detained in Argentina, gave further impetus to demands for truth and justice in Uruguay.

In the meantime, Uruguayan lawyers, taking their cue from their counterparts in Argentina and Chile, began to seek out loopholes in the Expiry Law⁴⁰. In 2000, lawyer Pablo Chargoña brought a writ of *habeas data* before the courts in the case of Elena Quinteros, a teacher who was forcibly disappeared in 1976, arguing that international law gave victims and their family members the right to know the truth about the fate of the victims and demanding a full investigation⁴¹. For the first time, a judge, Estela Jubette, ordered the Executive to carry out an investigation in this case, based on the contents of Article 4 of the Expiry Law. This ruling was upheld on appeal, and on October 19, 2002, judge Eduardo Cavalli formally charged former foreign minister Juan Carlos Blanco with the kidnapping and disappearance of Elena Quinteros based on

39 In key cases, the Peace Commission had issued false information, as later discovered through the investigative reporting of journalist Roger Rodríguez. For example, the Commission reported that Simón Riquelo, the son of Sarah Méndez who was kidnapped at the age of one month when his mother was detained, was dead; in March 2002 he was identified living with his adopted Argentine parents (the father was a retired police officer). The Commission repeated the military's assertion that all the disappeared had been thrown into the sea and thus there were no remains to be exhumed, yet in 2005, the remains of two bodies were discovered after a new left-wing president ordered exhumations in a military base. Interview with author, Roger Rodríguez, Montevideo, June 1, 2007. Interviews with family members of the disappeared and survivors of the dictatorship conducted in May and June 2007 revealed mixed reviews of the Peace Commission.

40 Interview by author, Pablo Chargoña, Montevideo, June 4, 2007.

41 *Ib.*

Chargoña's argument that the Expiry Law did not protect civilians (or high-ranking military officers) from criminal prosecution and that disappearance was an ongoing crime and therefore the Expiry Law was not applicable). Blanco was detained, the first time anyone in Uruguay had been arrested and charged with human rights violations committed during the military regime. In 2001, lawyers brought the first petition against former dictator Juan María Bordaberry, arguing that the amnesty law only provides immunity to military and police officials but not to civilians or military leaders who may be responsible for human rights violations⁴². A handful of state prosecutors, most notably Mirta Guianze, agreed to reopen some of these cases. This renewed legal activism, along with the 2005 election of Tabaré Vázquez of the Frente Amplio, opened new possibilities for prosecutions.

Though Vázquez explicitly stated in his campaign that he would not repeal the Expiry Law (presumably to avoid conflict with the armed forces and also for electoral reasons), he did say he would enforce the application of article 4, which called for a full investigation into the disappeared, a promise he fulfilled⁴³. Moreover, in practice, as human rights lawyers brought cases before the judiciary, Vázquez applied a different interpretation of the Expiry Law than his predecessors⁴⁴. The Expiry Law establishes that when a case involving accusations of human rights violations by military or police personnel appears before the judiciary, it should be derived to the Executive, who is to determine whether the judicial process should continue or not; since the law's creation the Executive routinely ruled to terminate judicial investigations. For the first time, Vázquez authorized investigations into a number of cases: those involving detained-disappeared, those involving children, and those that occurred outside Uruguayan territory. Also, the courts

42 Interview by author, Walter León (one of the lawyers in this case), Montevideo, June 5, 2007.

43 The investigation, carried out by an interdisciplinary team of researchers, was under the coordination of Álvaro Rico of the University of the Republic of Uruguay: *Investigación histórica sobre la dictadura y el terrorismo del Estado en el Uruguay (1978-1985)* (Universidad de la República Oriental del Uruguay/Comisión Sectorial de Investigación Científica, 2008).

44 Critics noted however that the Frente Amplio had sufficient votes in Congress to repeal the Expiry Law and failed to do so. As a result a broad front of civic groups launched a campaign to overturn the law in a plebiscite, which took place in 2009 in tandem with presidential elections. The plebiscite lost by a slim margin. However, a week before the vote, the Supreme Court—reversing its 1988 ruling—ruled that the Expiry Law was unconstitutional.

determined that civilians and the commanders of the military or police are not covered by the amnesty law and can be prosecuted.

A handful of state prosecutors have vigorously sought to move cases forward, complementing the work of human rights lawyers and activists⁴⁵. As a result, some 25 cases have moved forward in the Uruguay courts between 2006 and 2011. In 2006, former president Juan María Bordaberry, who was elected under questionable circumstances in 1973 and then suspended democratic institutions and ruled with the backing of the armed forces until he himself was deposed in 1976, was arrested for a series of political murders, including the assassination of opposition legislators Zelmar Michelini and Héctor Gutiérrez Ruiz in 1977 while in exile in Argentina. In 2010 he was convicted and sentenced to thirty years in prison for violation of the constitutional order, and for two politically motivated murders and nine disappearances. Juan Carlos Blanco was also found guilty in 2010 of being the co-author of a number of politically motivated murders. In 2009, a Uruguayan court found eight high-ranking members of the armed forces, including one of the leaders of the military dictatorship, General Gregorio Álvarez, guilty of 28 politically motivated assassinations and sentenced them to 20 to 25 years in prison. The sentence against Álvarez was upheld on appeal in 2010. The sentence against Bordaberry had not yet been confirmed before his death in July 2011.

Despite these significant steps forward, the Expiry Law continued to represent an obstacle to investigation and prosecute hundreds of other cases. Civil society efforts to have the law nullified through a second plebiscite in 2009 failed. However, the week before vote, the Supreme Court, in a reversal of its 1988 decision, ruled that the Expiry Law was unconstitutional⁴⁶. This was a dramatic development, but its effect was muted since such rulings only apply to the specific cases under review and so did not have a more general effect.

The decision handed down by the Inter-American Court of Human Rights in March 2011 shifted fundamentally the dynamics in Uruguay. In 2006, Juan Gelman and his granddaughter Macarena brought their case to the Inter-American Commission for Human Rights, arguing that

45 See the essays in Gabriela Fried & Francesca Lessa, Eds., *Luchas contra la impunidad: Uruguay 1985-2011* (Montevideo: Trilce, 2011).

46 “Ley violó separación de poderes”, *La República* (October 20, 2009); “La justicia uruguaya declara inconstitucional la amnistía a la represión militar”, *El País* (October 20, 2009).

the Expiry Law prevented the investigation of Macarena's parents and sanction of those responsible. Ultimately the case went to the Inter-American Court, which, following earlier jurisprudence that amnesty laws designed to give impunity to state agents responsible for human rights violations violated the American Convention on Human Rights, ruled in favor of the Gelmans. The Court determined that the Expiry Law was illegal and ordered the Uruguay state to ensure it no longer inhibits judicial inquiry and prosecution of human rights violations. Though it took months of negotiation, the Uruguayan Parliament passed a law in October 2011 that not only nullifies the Expiry Law but also establishes that the crimes committed during the dictatorship are crimes against humanity and therefore statutes of limitation do not apply.

As this article goes to press, media reports suggest that dozens if not hundreds of complaints are being lodged in Uruguay courts involving crimes that until now could not be prosecuted because of the Expiry Law. After years of complete impunity, and several years of seeking ways to investigate and prosecute human rights violations by circumventing the Expiry Law, Uruguay has thus taken a major step forward in anti-impunity efforts that will certainly reverberate throughout the region. The role played by civil society actors and lawyers challenging the Expiry Law through domestic and international courts was fundamental to these new developments, though their efforts may have had less success in a different political context. As in previous cases, it was the confluence of civil society action on both the political and legal fronts demanding an end to impunity; the presence of receptive legal operators in the Uruguay judiciary; and a left-wing government willing to revisit the issue of impunity, that resulted in this dramatic shift in Uruguay.

4. Peru: Partial Accountability

On December 30, 2009, the Peruvian Supreme Court ratified the conviction of former president Alberto Fujimori and his sentence of 25 years in prison for his role in several grave violations of human rights⁴⁷. The Fujimori trial and verdict has been hailed by international law and human rights experts as an unimpeachable legal process that marks a watershed in anti-impunity efforts in Peru and around the globe. The

47 On the Fujimori trial, see J. Burt, "Guilty as Charged: The Trial of former Peruvian President Alberto Fujimori for Grave Violations of Human Rights", *International Journal of Transitional Justice* 3:3 (November 2009), pp. 384-405.

Fujimori trial not only set new precedents in human rights jurisprudence; it also established that the Peruvian Truth and Reconciliation (CVR) report and declassified government documents could be used as evidence; and sustained the argument that in complex human rights cases such as this, where direct orders and evidence may have been destroyed or may have been only verbal in nature, circumstantial evidence may be sufficient in determining criminal responsibility. While the judges relied on domestic law to prosecute Fujimori of the crimes of aggravated homicide, assault and kidnapping, they noted that these were part of a generalized pattern of human rights violations that constituted a state policy, and that in international law these constitute crimes against humanity. However, the anticipation that the Fujimori trial would energize Peru's accountability efforts was tempered by the awareness that justice in other human rights cases is proving increasingly elusive in Peru. Even so, in Peru the significant achievements to date cannot be understood without reference to the important role played by civil society actors and their dedicated efforts to promote accountability for grave human rights violations.

During Peru's internal armed conflict (1980-2000), human rights organizations and survivors and relatives of victims pressed tirelessly and often at great cost in favor of criminal prosecutions for human rights violators. They documented rights abuses, presented writs of *habeas corpus*, litigated human rights cases, and defended victims, but the norm was impunity for violations committed by state agents⁴⁸. While many cases were brought before the courts during the 1980s and early 1990s, the military justice system would interpose jurisdictional claims, which the Supreme Court almost universally accepted; the result was impunity for state-sponsored rights abuses. In 1995, two amnesty laws were passed that institutionalized impunity for human rights abuses in Peru.

With the collapse of the authoritarian regime of Alberto Fujimori (1990-2000), the human rights community lobbied the interim government of Valentín Paniagua (2000-2001) for a truth commission to investigate human rights violations committed during the 1980s and 1990s. Paniagua created the Peruvian Truth Commission in June 2001, and the body was ratified by newly elected President Alejandro Toledo (2001-2006) and renamed the Peruvian Truth and Reconciliation Commission (CVR). The

48 According to Peru's Truth and Reconciliation Commission, the *Sendero Luminoso* (Shining Path) insurgent movement was responsible for the largest percentage of deaths due to violence (54%), while state security forces were responsible for approximately 34% of all deaths.

Peruvian human rights movement played a crucial role in pressing for a truth commission that would adopt an integral vision of transitional justice, meaning that it would not simply investigate the horrors of the past, but also attempt to identify those responsible and hold them accountable for their crimes, as well as to propose individual and collective reparations to victims and their family members. When the CVR presented its final report in 2003, it also handed over 47 cases to the Public Ministry for criminal prosecution⁴⁹. The majority of these cases involved members of government security forces, since most of the crimes committed by *Sendero Luminoso* had already been prosecuted, and those responsible, including the organization's principal leaders, were either in prison or had been killed⁵⁰.

Even before the truth commission was created, however, the efforts of the human rights community to promote an accountability agenda fundamentally set the tone for this process. In the face of obstacles to justice within Peru, human rights organizations began bringing key cases before the Inter-American system of human rights. Dozens of cases made their way to the Inter-American Court of Human Rights, and in many the Court found the Peruvian state responsible and ordered criminal investigations. The watershed mark came in March 2001, when the Inter-American Court handed down its decision in the *Barríos Altos* case. The Court found the Peruvian state responsible for the 1991 massacre, in which 15 Peruvian citizens, including an eight-year-old child, were murdered by a state-sponsored death squad and four others were gravely wounded, and ordered the Peruvian state to investigate and punish those responsible and to provide reparations for the survivors and relatives of the victims. The Court also established that the amnesty laws passed by the pro-Fujimori Congress in 1995 violated Peru's obligations under the American Convention on Human Rights and declared the law devoid

49 Javier Ciurlizza & Eduardo González, "Verdad y justicia desde la óptica de la Comisión de la Verdad y Reconciliación", in *El legado de la verdad. La justicia penal en la transición peruana*, Lisa Magarrell & Leonardo Filippini, Eds., (Lima: International Center for Transitional Justice/IDEHPUCP, 2006).

50 After an Inter-American Court ruling that the military courts violated due process rights, hundreds of terrorism suspects, including Abimael Guzmán, were subsequently retried. See Luis E. Francia Sánchez, "Los procesos penales contra las organizaciones terroristas", in *El legado de la verdad. La justicia penal en la transición peruana*, Lisa Magarrell & Leonardo Filippini, Eds., (Lima: International Center for Transitional Justice/IDEHPUCP, 2006).

of legal effect⁵¹. This ruling has since been upheld in various legal proceedings in Peru, including in a ruling by the country's Constitutional Tribunal, which has made criminal prosecutions for human rights violations possible.

Between 2004 and 2005, a special criminal system to prosecute human rights cases was established, as recommended by the CVR. Human rights activists hailed this as a positive development because it was meant to ensure specialization of prosecutors and judges in human rights cases while also allowing them to dedicate their time exclusively to human rights cases so as to ensure celerity in the adjudication process. While there are signs of progress, there are also a number of concerning trends particularly in recent years that raise issues about Peru's accountability efforts.

The first sentence to be handed down was in 2006, in the case of the forced disappearance of university student Ernesto Castillo Páez. Four police officers were convicted for up to 16 years for this crime, and for the first time Peruvian courts referred to forced disappearance as a crime against humanity. A number of other convictions were handed down between 2006 and 2008 in emblematic cases, including the disappearance of communal authorities in Chuschi and the disappearance of journalist Hugo Bustíos. In 2008, former head of the National Intelligence Service (SIN), Julio Salazar Monroe, was convicted for his role in the 1992 disappearance and killing of nine students and a professor from La Cantuta University. Fujimori was convicted the following year for his role in this and other human rights cases, including the Barrios Altos massacre.

However, enthusiasm over human rights prosecutions in Peru was tempered by the growing reality of serious problems in Peru's criminal justice process, including the sluggish pace of investigations in the Public

51 Inter-American Court, *Barrios Altos* case, Judgment of March 14, 2001, Ser. C, No. 83, Par. No. 1. Peruvian human rights NGOs, represented by the National Human Rights Coordinator, litigated this case before the Inter-American Court, and specifically requested the Court to make specific recommendations beyond the investigation and sanction of those responsible for the Barrios Altos massacre in order to dismantle the mechanisms that had guaranteed impunity in Peru. In response the Court ruled that the amnesty law violates the Peruvian state's obligations and declared it without legal effect. Personal communication, Ronald Gamarra, one of the lawyers involved in this case, Lima, May 2008. In a subsequent sentence, the Court argued that this ruling is valid for the entire region; Inter-American Court, *Barrios Altos* case, Judgment of September 3, 2001, Ser. C, No. 83, par. 18.

Ministry; weak formulations of indictments and evidence collection by state prosecutors; persistent refusals by government and military officials to provide access to information necessary to identify alleged perpetrators and advance criminal investigations; and the application of questionable legal concepts have conspired to undermine the early success of Peru's efforts to hold perpetrators of human rights violations accountable. This scenario has been further complicated by a hostile political environment for human rights prosecutions under the previous government of Alan Garcia (2006-2011).

Public Ministry officials register approximately 1700 complaints of human rights violations under investigation registered by the Public Ministry⁵². Less than two percent of cases have been sentenced (28) and of these, a large number are acquittals. Only four percent of cases are in advanced stages of the judicial process (*e.g.* have formal indictments and are either undergoing judicial investigation prior to formal setting of public trial date, or are currently in public trial). Approximately 45% of cases have either been closed due to lack of sufficient evidence or inability to identify perpetrators. (During Peru's internal armed conflict, soldiers often used pseudonyms to protect their identity, and Defense Ministry officials have steadfastly refused to release information such as personnel files to help prosecutors identify the perpetrators.) Nearly half of the total cases remain under investigation in the Public Ministry. Despite the large number of cases, the special sub-system created to investigate and adjudicate human rights cases has seen its mandate expand to include cases of drug trafficking, money laundering, kidnapping, and other crimes, diluting the effectiveness of the specialized sub-system and generating significant delays in the judicial process at all levels. Finally, while Peru's Constitutional Tribunal has stated that international law should be considered by Peruvian courts in trying human rights cases, and has been used by judges to support verdicts condemning perpetrators of human rights crimes in several cases, in a number of recent cases judges have ignored these precedents or revised them in such ways that result in the acquittal of alleged perpetrators. A brief comparison might help put this in perspective: in 2010, in Argentina 110 defendants were convicted

52 Jo-Marie Burt & Carlos Rivera, *El proceso de justicia frente a crímenes contra los derechos humanos* (Instituto de Defensa Legal, forthcoming).

of human rights violations and nine were acquitted; in the same year in Peru, 21 were convicted and 27 were absolved⁵³.

These trends are not isolated incidents, but occurred in the context of political interference in the judicialization process during the García administration that seem designed to halt accountability efforts in Peru. Shortly after García's inauguration in 2006, the state announced that it would provide legal defense to all state agents accused of human rights violations, even though many victims lack legal representation as well as adequate measures of protection for witnesses. Successive defense ministers have made generic accusations that these trials constitute 'political persecution' of the armed forces, and routinely attack human rights organizations in the press. In addition, there have been repeated efforts to pass amnesty laws that would end human rights prosecutions. In 2008 when a leading APRA congresswoman proposed a law that would provide for a general amnesty for military and police officials accused of human rights violations, but the initiative did not prosper. In September 2010, President García passed Decree Law 1097, which critics charged was a veiled amnesty law designed to halt human rights prosecutions. Domestic and international outcry forced García to revoke the decree law, but calls for general amnesties continue to be heard inside and outside the halls of Congress. Prosecutors and judges note in private conversations that they have been subjected to different forms of political pressure by the sectors of the armed forces eager to see criminal trials for human rights violations ended. During the García government, the president, vice-president and former navy officer Luis Giampetri, and successive defense ministers have accused human rights organizations and state prosecutors of "persecution" of the armed forces. In effect, despite significant progress achieved by pro-accountability actors, the reduced political space for accountability efforts under the García government has presented a fundamental challenge for accountability efforts in Peru.

53 Statistics for Argentina from the Centro de Estudios Legales (CELS), March 24, 2011. In the case of Peru, 19 of the 21 convicted in 2010 were convicted in the same legal process for the accumulated cases of the Barrios Altos massacre, and the disappearances of nine peasant leaders from Santa and journalist Pedro Yauri. Only two state agents were convicted by the primary human rights tribunal, the Sala Penal Nacional, in 2010. Data from research on human rights prosecutions conducted in Peru by author; for project research findings see www.rightsperu.net.

In July 2011 President Ollanta Humala was inaugurated president of Peru. A former military officer, in 2006 Humala himself faced charges of responsibility for human rights violations committed when he was a commanding officer in Madre Mía. His case was closed after two witnesses recanted their testimony. Despite concerns about Humala's past record, human rights observers note that he was the only presidential candidate to support the post-CVR agenda in favor of truth, justice and reparations, and he recently stated that his government would not support an amnesty law for human rights violators. However, the problems within the Public Ministry and the Judiciary noted here remain unresolved and without substantive reforms it is likely that few cases will ever come to trial, and many of these may end in acquittals. Thus, despite significant advances, there remains considerable impunity in Peru and growing concerns that the progress made to date will be reversed.

5. Conclusion: Lessons from Latin America's Experiment with Accountability

This review of recent accountability efforts in Latin America highlights the fundamental role played by civil society groups, particularly human rights organizations and groups of survivors and relatives of victims, in pursuing truth and justice in the region. However, cases examined here also suggest that these efforts operate in a broader political context that must also be examined. In other words, there is a complex dynamic between state and civil society actors that contributes to the expansion or contraction of opportunities for domestic human rights prosecutions in the region. Each case suggests that even when accompanied by substantive judicial reform, the accountability agenda is vulnerable to shifts in the political winds. At the same time, the cases examined here highlight the way civil society pro-accountability actors respond to contractions in domestic opportunities for human rights prosecutions by going outside the boundaries of the nation-state to international tribunals and arenas where they can press their demands and seek redress on behalf of victims.

The processes that have taken place or are underway in Argentina, Chile, Uruguay, and Peru represent the promise of criminal trials in cases of grave human rights violations. They affirm central tenets of democratic rule: equality before the law; punishment of perpetrators of rights violations restores rule of law, particularly in instances of state repression

or terror, as it symbolizes the dismantling of structures of repression that benefitted from the power of the state; reparations to victims; and in some cases, additional knowledge about the fate of victims. There is also educational value to society in hearing the testimony of survivors, relatives of victims, and other witnesses to the horrors of the past; in many ways these trials are contributing to rewriting the history of the recent past in Latin America to more fully incorporate the voice of those silence by years of military rule and authoritarian government.

Nevertheless, the picture is far from perfect. Criminal trials in cases of grave human rights violations are slow by nature. In Argentina one estimate suggests that at the current pace it will take 100 years for the current trials in progress to be complete; in Peru, as we have seen, things move at an even more sluggish pace, threatening to undermine the very credibility of the process. In addition, legal processes are subject to all kinds of manipulations: defendants often successfully maneuver the legal process to avoid prosecution or delay proceedings; prosecutors are (perhaps by necessity) selective about which trials to try, which ones must be forgone. Human rights cases are by definition complex cases, as they involve crimes that are often carried out in secrecy, many years ago. Witnesses die or, as in the case of Julio López in Argentina, face reprisals for speaking out in trials. And as we have noted already, prosecution efforts also clearly prove vulnerable to shifts in the political context. There are also tensions within human rights organizations about whether prosecutions are the top priority given other pressing needs, whether this may be the demand for truth via exhumations, as is evident in Argentina and Peru, or current forms of violence and organized crime, as is the case in Central America.

In addition, the sustainability of these processes remains an open question. In some cases, as in Argentina, there is little vocal public support for the military and police officials who are being prosecuted; indeed, as Gastón Chillier from CELS has noted, virtually no one in Argentina contests the legitimacy of the human rights trials⁵⁴. This is not the case in other places, such as Peru, where powerful alliances have been reformed to reduce the scope of human rights prosecutions. In theory trials uphold democratic ideals that are central to the rule of law, including equality before the law and the duty of the state to hold all those accountable for the crimes they have committed regardless

54 Chillier, *Ib.*

of privilege or position. But how are trials understood by the broader public? How do people talk about trials, criminal justice, and related issues in relation to existing political struggles? How do we assess the relationship between trials for human rights violations and broader questions of public support, public apathy, as well as organized political support for or resistance to such trials?

Striking shifts have occurred in Latin America in the past decade in favor of accountability. But the gains made are not assured, and elsewhere in the region, impunity remains the name of the game. While the progress seen to date should be celebrated, it can only be tempered by the ongoing reality of impunity that continues to characterize most of the region.

A minority of Latin American courts still uphold past amnesty laws. They argue that while amnesty laws are deemed unacceptable now, they were not at the time they were enacted, and judges should not simply overturn laws through "retrospective lawmaking." Once a case is accepted by a judge, authorities need to determine who is liable.Â Keywords: Latin America, impunity, amnesty, dirty war, human rights, Central America, Mexico, state-sanctioned violence, reconciliation, truth commissions. We welcome feedback.Â "Human Rights Prosecutions and the Participation Rights of Victims in Latin America,"*Human Rights Quarterly*, 2015, Vol. 37. doi: 10.1111/lasr.12040. Criminal Justice, Human Rights, International, Race criminal justice, forensic testing, Latin America.