

## From Optimism to Backlash: Uruguay and the Gelman Decision After Ten Years

**Abstract:** *Gelman v. Uruguay* was a watershed moment in Uruguayan civil society's quest for accountability, ultimately prompting the official repeal of the amnesty law. Almost all scholarship about the case centres around the immediate aftermath, with an overwhelming emphasis on optimism for transitional justice. Yet, a longer timeframe reveals this optimism ultimately did not translate into compliance. In this article, we analyse how the initial momentum unravelled as conditions necessary for compliance weakened amid rising backlash against the judgment. This analysis reveals the fundamental challenges with implementing criminal accountability reparations measures, even in established democracies with otherwise strong human rights records.

**Keywords:** Uruguay, transitional justice, human rights, Inter-American system

### Introduction

In February 2011, the Inter-American Court of Human Rights issued a ruling in the case of *Gelman v. Uruguay*, its first decision on dictatorship-era human rights violations in Uruguay. The judgment declared the 1986 *Ley de Caducidad de la Prevención Punitiva del Estado* (hereafter Ley de Caducidad, or Amnesty Law) a violation of international human rights law and ordered it overturned. The law granted amnesty for military and security personnel from prosecution for crimes committed between 1973 and 1985—the official years of the nation's military dictatorship.<sup>1</sup>

In the ruling's aftermath, many victims and civil society groups were optimistic that the Inter-American Court's decision would help compel the country to open opportunities for them to pursue accountability. Indeed, both press and interviews at the time reveal a sense that the *Gelman* decision would be a pivotal moment in shifting the country's intransigent impunity

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<sup>1</sup> While President Juan María Bordaberry shut down Parliament on June 27, 1973, repression and violence against the left began much earlier. Debates about both reparations and amnesties often include the years 1968-1985, which is why we use the term 'official' years of the dictatorship. For example, see: Gonzalo Varela Petito, *El Golpe de Estado más largo Uruguay, Febrero-Junio 1972* (Montevideo: Editorial Planeta, 2023).

norm.<sup>2</sup> Liliana Tojo, program director for the organization that helped litigate the case, the Center for Justice and International Law (CEJIL), explained that ‘the Court has finally dictated that Uruguay cannot continue to seek excuses for maintaining impunity for the victims of torture and other horrendous crimes’.<sup>3</sup>

Key international and domestic factors buoyed this optimistic outlook. The decision occurred during the so-called international ‘justice cascade’, where norms about the possibility for trials began to shift away from impunity and towards holding state officials accountable for human rights violations.<sup>4</sup> Perhaps even more importantly, Uruguay seemed particularly well placed to comply. Uruguay held a strong human rights record – international monitoring bodies regularly rated the country highest or close to the highest in Latin America for its commitment to political rights and civil liberties, capacity to combat corruption, and social inclusion.<sup>5</sup>

Additionally, Uruguay appeared to possess three conditions that scholars have identified as necessary to produce compliance: a strong civil society, political will from a sympathetic governing party, and a progressive judiciary.<sup>6</sup> At the time of the decision, the second consecutive

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<sup>2</sup> For a longer history of Uruguay’s struggle with accountability, see, among others: Debbie Sharnak, ‘The Evolution of Transitional Justice in Uruguay’, *Oxford Research Encyclopedia on Latin American History* (2022), <https://doi.org/10.1093/acrefore/9780199366439.013.1056>; Elin Skaar, ‘Wavering Courts: From Impunity to Accountability in Uruguay’, *Journal of Latin American Studies*, 45:3 (2013), pp. 482-512; and Francesca Lessa, *Memory and Transitional Justice in Argentina and Uruguay* (New York: Palgrave Macmillan, 2013).

<sup>3</sup> Center for Justice and International Law, ‘Inter-American Court of Human Rights says Uruguay must investigate and punish dictatorship crimes’, 24 March 2011, available at <https://cejil.org/en/press-releases/inter-american-court-of-human-rights-says-uruguay-must-investigate-and-punish-dictatorship-crimes/>.

<sup>4</sup> Kathryn Sikkink, *The Justice Cascade: How Human Rights Prosecutions Are Changing World Politics* (New York: W.W. Norton Company, 2011).

<sup>5</sup> See, for example, Arch Puddington, Aili Piano, Eliza Young, and Tyler Roylance, eds., *Freedom in the World 2010* (New York: Rowman & Littlefield Publishers Inc., 2010), pp. 705-708; Transparency International, ‘Corruption Perceptions Index’, available at [www.transparency.org/en/cpi/2010](http://www.transparency.org/en/cpi/2010).

<sup>6</sup> There is a great deal of scholarship that looks at factors of potential state compliance which includes the above factors and are often grouped into parts of internal state characteristics, external incentives, and features of the case. See Darren Hawkins and Wade Jacoby, ‘Partial Compliance: A Comparison of the European and Inter-American Courts of Human Rights’, *Journal of International Law and International Relations*, 6:1 (2010), pp. 35–85 and Cecilia M. Bailliet, ‘Measuring Compliance with the Inter-American Court of Human Rights: The Ongoing Challenge of Judicial Independence in Latin America’, *Nordic Journal of Human Rights*, 31:4 (2013), pp. 477–95, among many others.

center-left government, led by the Frente Amplio coalition, held the presidency and majorities in both houses of Parliament. Uruguay had a strong civil society, or what Francesca Lessa calls ‘justice seekers’, newly galvanized and poised to act on the Court’s ruling.<sup>7</sup> Additionally, there were several progressive judges in key positions within the judiciary that, over the previous decade, had been willing to find legal loopholes in the amnesty law to allow a limited number of trials to proceed. Many believed that without the amnesty law in place, more trials would move forward. Indeed, just eight months after the Court’s decision, in October 2011, Uruguay complied with the Inter-American Court’s judgment and officially revoked the amnesty law. Subsequently, victims petitioned to have previously filed cases ‘unarchived’ and filed many new cases as well.

Yet, the optimism surrounding the potential for trials stood in contrast to available evidence about compliance with Inter-American Court rulings to provide legal accountability. At the time of the *Gelman* judgment, the Court had ordered states to investigate, prosecute, and punish (if warranted) in 68 separate judgments, targeted at numerous different countries, but none had ever done so.<sup>8</sup> Indeed, in the years since the *Gelman* decision and the law’s repeal, Uruguay’s compliance with the various ordered remedies, particularly criminal trials, has been spotty at best. Instead, the path towards accountability has been characterized by judicial backpedalling, intransigence, and a struggle to harness sufficient political will.

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<sup>7</sup> Francesca Lessa, *Condor Trials: Transnational Repression and Human Rights in South America* (New Haven, CT: Yale University Press, 2022), pp. 8-9.

<sup>8</sup> Data from Francesca Parente, ‘Apples to Apples: How (Not) to Compare Compliance Records Across Courts’, unpubl. man., American Political Science Association, 2021. Through 2018, the order to investigate, prosecute and punish had been ordered 135 times (monitored 116 times) and had only been complied with in three instances.

Previous scholars have analysed both general rates of compliance with Inter-American Court orders and the initial *Gelman* ruling.<sup>9</sup> However, this article is the first to examine the *Gelman* case within a ten-year timeframe of its initial judgment to grapple with the country's struggle to comply with the decision, with a particular focus on judicial accountability. Scholars have increasingly identified the importance of the effects of time on compliance, such as the Court's reliance on protracted rather than immediate remedies to understand delays in compliance, and recent studies have used large-scale datasets to analyse trends with compliance over long timeframes.<sup>10</sup> Our study takes a close look at one judgment with wide-ranging ramifications to identify the particulars of a context-specific account, using interviews, contemporaneous Uruguayan and international newspapers, NGOs' press releases, government documents and statements, and documents from the Inter-American system. This article analyses how, in the first ten years after the decision, initial momentum toward compliance unravelled and the conditions that proved necessary for compliance weakened amid a rising movement against the Inter-American Court's judgment. While most scholarship on the case focuses on the immediate aftermath of the decision, the ten-year time horizon offers the opportunity to look

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<sup>9</sup> For literature on compliance with Inter-American Court rulings in general see, e.g., Courtney Hillebrecht, *Domestic Politics and International Human Rights Tribunals* (Cambridge: Cambridge University Press, 2014); Francesca Parente, 'Past Regret, Future Fear: Compliance with International Law', unpubl. PhD diss., UCLA, 2019; and Jillienne Haglund, *Regional Courts, Domestic Politics, and the Struggle for Human Rights* (Cambridge: Cambridge University Press, 2020). For literature that addresses the *Gelman* case, see: Skaar, 'Wavering Courts'; Jo-Marie Burt, Francesca Lessa, and Gabriela Fried Amilivia, 'Civil Society and the Resurgent Struggle against Impunity in Uruguay (1986–2012)', *International Journal of Transitional Justice*, 7:2 (2013), pp. 306-327; 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*, eds. Pablo Leighton and Fernando López (Newcastle: Cambridge Scholars Publishing, 2015), pp. 33-56; and Lessa, *Condor Trials*, pp. 191-198.

<sup>10</sup> Aníbal Pérez-Liñán, Luis Schenoni, and Kelly Morrison, 'Compliance in Time: Lessons from the Inter-American Court of Human Rights', *International Studies Review*, 25:1 (2023), <https://doi.org/10.1093/isr/viac067>; Carmela Lutmar, Cristine Carneiro, and Sara Mitchell, 'Formal Commitments and States' Interests: Compliance in International Relations', *International Interactions*, 42:4 (2016), pp. 559-64; and Parente, 'Past Regret, Future Fear'.

more closely at the changes in compliance conditions over time, particularly since the process to full compliance in this case has been non-linear, complete with delays and even reversals.

Thus, using the first decade after the decision as a contained evaluation period, this article concludes that Uruguay's struggling but persistent civil society was the only consistent pro-compliance force. Civil society was comprised of victim, family, and human rights groups—many which had emerged during and immediately after the dictatorship.<sup>11</sup> Ultimately, however, they proved to be a necessary but insufficient condition to produce compliance with trials. The article analyses how, instead of compelling accountability, the *Gelman* decision provoked backlash to justice initiatives and ultimately brought forward nationalist calls to guard against the 'intrusion' of the Inter-American-Court system in the form of threats to researchers and activists, the rise of the far-right *Cabildo Abierto* Party, and Supreme Court cases that reaffirmed limits to prosecution. In this way, the article offers a view into some of the fundamental challenges with implementing criminal accountability reparations measures, even in established democracies with otherwise strong human rights records.

### **The *Gelman* Case**

For much of the first two decades after its transition back to democratic rule in 1985, Uruguay stood in contrast to many of its neighbours in dealing with accountability for crimes committed during the Cold War dictatorships. As Argentina and eventually Chile moved towards

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<sup>11</sup> For more on these groups, see Debbie Sharnak, *Of Light and Struggle: Social Justice, Human Rights, and Accountability in Uruguay* (Philadelphia, PA: University of Pennsylvania Press, 2023), chapters 5-7; and Gabriel Bucheli, Valentina Curto, Vanesa Sanguinetti, Carlos Demasi, and Jaime Yaffé, *Vivos los llevaron--: historia de la lucha de Madres y Familiares de Uruguayos Detenidos Desaparecidos (1976-2005)* (Montevideo: Ediciones Trilce, 2005).

implementing justice initiatives for gross human rights violations, Uruguay's efforts were limited to a community-run truth commission and only a few attempts to advance cases within the judiciary. This difference is due in large part to what scholar Elin Skaar has called Uruguay's 'aggressive anti-human rights policy' pursued through a conservative judiciary, a hostile executive, and a remarkably strong amnesty law.<sup>12</sup> The amnesty law had the added perception of legitimacy for having narrowly survived two attempts to overturn it through democratic referendums—one in 1989 and another in 2009.

Argentine author and poet Juan Gelman's attempts to pursue justice in Uruguay for his son, Marcelo Gelman, and daughter-in-law, María Claudia García Iruretagoyena de Gelman, during a period of large-scale impunity demonstrate the persistent accountability challenges so many Uruguayans faced. His case originated in Argentina where his son and pregnant daughter-in-law were disappeared in 1976 when the Argentine military abducted the couple, who were politically active and involved in several leftist movements, in Buenos Aires. The military sent Marcelo to one of the more infamous clandestine detention centers, *Automotores Orletti*, in Buenos Aires where he was tortured and killed. María Claudia was transferred to a clandestine detention center in Uruguay, *Centro de detención del Servicio de Información de Defensa* (SID) as part of Operation Condor.<sup>13</sup> Her daughter, Macarena, was born in a Montevideo military hospital. María Claudia was never heard from again, and her remains have yet to be found.

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<sup>12</sup> Elin Skaar, 'Legal Developments and Human Rights in Uruguay: 1985-2002', *Human Rights Review*, 8:2 (2007), pp. 52-70.

<sup>13</sup> For more on Operation Condor, see J. Patrice McSherry, *Predatory States: Operation Condor and Covert War in Latin America* (Lanham, MD: Rowman & Littlefield Publishers, 2005); and John Dinges, *The Condor Years: How Pinochet and His Allies Brought Terrorism to Three Continents* (New York: The New Press, 2004).

Macarena was left on the doorsteps of a Uruguayan police officer, Ángel Tauíño, whose family adopted the girl.<sup>14</sup>

Macarena grew up unaware of her own history, and her experience was not an isolated incident. According to human rights groups, as many as five hundred children in Argentina and Uruguay were taken from their imprisoned parents and given to childless military or police couples whom the military regimes favoured.<sup>15</sup> Juan Gelman, aware of his daughter-in-law's pregnancy at the time of abduction and the military's practice of giving babies that were born in captivity to other families, searched tirelessly for his granddaughter.<sup>16</sup> It was only with the help of the Las Abuelas de la Plaza de Mayo that he finally found Macarena in 1999.

Gelman sought accountability for the crimes committed against his family in Uruguay. However, his appeals to both the executive and judicial branches were blocked, in large part due to the Ley de Caducidad, despite his resources and globally renowned status for his writings.<sup>17</sup> As a result of the state's unwillingness to pursue their claims, the Gelmans appealed to the Inter-

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<sup>14</sup> Francesca Lessa, 'Elusive Justice and Changing Memories in Uruguay', *International Journal of Conflict and Violence* 8:1 (2014), pp. 76-90.

<sup>15</sup> Francisco Goldman, 'Children of the Dirty War', *The New Yorker*, 19 March 2012, available at [www.newyorker.com/magazine/2012/03/19/children-of-the-dirty-war](http://www.newyorker.com/magazine/2012/03/19/children-of-the-dirty-war).

<sup>16</sup> This practice was known by human rights groups during the military's rule and discussed in Argentina's truth commission report. See Comisión Nacional sobre la Desaparición de Personas (CONADEP), *Nunca Más: Informe de la Comisión Nacional sobre la Desaparición de Personas* (Buenos Aires: CONADEP, 1984).

<sup>17</sup> Gelman had first tried to appeal directly to then-President Juan María Sanguinetti. Sanguinetti's first term in office had been in the immediate transition back to democratic rule (1985-1990), where he had staunchly promoted and defended the Ley de Caducidad. By the time Gelman appealed to him, he was in his second non-consecutive term in office (1995-2000) but continued to support a policy of impunity and silencing about the period of the dictatorship. Even after domestic and international pressure from writers, NGOs, and public figures, Sanguinetti proved intransigent and unwilling to investigate the matter. For a detailed account of the back and forth between Sanguinetti and Gelman, see: Sharnak, 'The Gelman Case', pp. 37-39. The Gelmans also had two unsuccessful criminal complaints, which were blocked by the amnesty law by the courts.

American Commission on Human Rights in 2006.<sup>18</sup> The Commission submitted the case to the Inter-American Court of Human Rights in 2010.

The hearings took place in Quito, Ecuador. Gelman, represented by CEJIL and José Luis González, provided testimony, and was joined by other witnesses and experts who had worked on the case and could testify about María Claudia's disappearance. Uruguay did not present any witnesses or experts.<sup>19</sup> At the time of the hearings, the political climate had changed from the period in which the Gelmans had initially filed the case: Uruguay was under a Frente Amplio presidency for the first time and there were signs of executive willingness to pursue justice. As early as 2005, President Tabaré Vazquez had sought to invoke Article 4 of the Ley de Caducidad, which allows for the executive to investigate the disappearance of individuals, to advance the Gelman case in the domestic judicial system; however, his efforts were stymied by an intransigent judiciary, unwilling to open the case.<sup>20</sup>

In February 2011, a few months after hearing Gelman's case, the Inter-American Court issued its ruling. It found Uruguay responsible for forced disappearances committed during its dictatorship for the very first time, deciding Uruguay had violated several articles of the American Convention on Human Rights, including the right to life, right to humane treatment, and right to due process, among others. Additionally, the Court declared that Uruguay's Ley de Caducidad was a violation of its obligations under Article 2 of the American Convention on Human Rights to adopt domestic legislation to implement its human rights obligations. The

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<sup>18</sup> Ariela Peralta, 'El caso Gelman y los desafíos a la Ley de Caducidad,' in Gabriela Fried and Francesca Lessa (eds.), *Luchas Contra la Impunidad: Uruguay 1985-2011*, (Montevideo: Ediciones Trilce, 2011), pp. 203-216. For more on the process of how cases move through the Inter-American system, see: Jo M. Pasqualucci, *The Practice and Procedure of the Inter-American Court of Human Rights*, second edition (New York: Cambridge University Press, 2012).

<sup>19</sup> Peralta, 'El caso Gelman', pp. 208.

<sup>20</sup> Elin Skaar, *Judicial Independence and Human Rights in Latin America: Violations, Politics, and Prosecution* (New York: Palgrave Macmillan, 2011), pp. 145.



invalidation of the amnesty law was in line with decisions against amnesty laws in Peru, Chile, and Brazil that had been issued over the previous decade.<sup>21</sup>

The Court ordered 13 unique remedies in the *Gelman* case. As seen in the table below, these included financial measures, orders to investigate and sanction; guarantees of non-repetition, measures of satisfaction.

Table I. *Compliance Orders in Gelman v. Uruguay*

Type of Reparation	Remedies Ordered
Financial (3)	(1) <b>Material damages</b> (\$300,000 in lost earnings; \$5000 for expenses incurred in search of Maria Claudia); (2) <b>Moral damages</b> (\$100,000 for Maria Claudia Garcia de Gelman, \$80,000 for Maria Macarena Gelman Garcia); (3) <b>Court costs</b> (\$28,000)
Guarantee of non-repetition (5)	(1) Guarantee the Expiry Law does not offer an impediment to prosecution; (2) Create a permanent human rights program for prosecutors and judges; (3) Create Interministerial Commission to investigate disappearances; (4) Adopt a protocol for the recovery of remains of those disappeared (5) Guarantee access to information in state archives
Investigation & Sanction (1)	(1) Investigate, prosecute, and punish those responsible
Satisfaction (4)	(1) Find and return Gelman's remains; (2) Public ceremony acknowledging responsibility; (3) Commemorative plaque outside SID building; (4) Publication of the judgment

Source: *Gelman v. Uruguay*, Merits and Reparations, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 221 (24 February 2011).

The remedies ordered in this case looked largely similar to those in other cases of forced disappearance before the Inter-American Court. Even the monetary reparations, though quite

<sup>21</sup> These cases included *Barrios Altos v. Peru* (2001), *La Cantuta v. Peru* and *Almonacid v. Chile* (both 2006), and *Gomes Lund et al. ('Guerrilha do Araguaia') v. Brazil* (2010).

large, are comparable to those in other forced disappearance cases.<sup>22</sup> The order to overturn amnesty laws was also common in all applicable cases since *Barrios Altos v. Peru* (2001). Here, the Inter-American Court ordered Uruguay to ‘guarantee that the Expiry Law... will never again be an impediment to the investigation of the facts and for the identification, and where applicable, punishment of those responsible’.<sup>23</sup> In other words, Uruguay was being ordered to overturn the amnesty law. What was different from the other countries’ cases regarding their amnesty laws was the fact that in Uruguay, the amnesty law had been twice upheld in popular referenda, including as recently as 2009. While the Court acknowledged the direct democratic procedures, it ruled that this ‘does not automatically or by itself grant legitimacy under International Law’.<sup>24</sup>

Even with these clear mandates, no one knew whether or how Uruguay would comply with the ruling. Overall, in part due to its strong domestic legal system, Uruguay has had the second-lowest number of cases reach the Court of countries within the Organization of American States under the Inter-American Court’s jurisdiction.<sup>25</sup> In fact, *Gelman* was the first dictatorship case from Uruguay to reach the Inter-American Court, despite Uruguay having been under the Court’s jurisdiction for over 20 years at the time. Therefore, there was not much jurisprudential precedent to predict how closely the nation would follow the Court’s recommendations. Previous scholarship has found that states generally comply with remedies like paying monetary reparations and publishing the judgment, but the compliance rate for orders to investigate,

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<sup>22</sup> Parente, ‘Apples to Apples’. The *Gelman* case is far above the average award per victim in material damages (\$305,000 compared to about \$77,000), but far below the average award per victim in moral damages (average of \$90,000 per victim in *Gelman* compared to average moral damage award of \$200,000 per victim).

<sup>23</sup> *Gelman v. Uruguay, Merits and Reparations*, operative para. 11

<sup>24</sup> *Gelman v. Uruguay, Merits and Reparations*, para. 238

<sup>25</sup> Barbados has the fewest cases, with only two (Uruguay has had three). By way of comparison. Argentina has had 35 cases with judgments, and Chile has 15, through December 2022.

prosecute, and punish is extremely low.<sup>26</sup> Additionally, the last democratic referendum on the amnesty law had been held just two years prior to the decision, engendering tension about an international court's imposition on Uruguayan sovereignty and domestic will. The Inter-American Court's decision was in line with previous jurisprudence that consistently overturned amnesty laws; however, this time it was perceived as doing so through taking a counter-majoritarian position that it had been able to avoid in other cases where the amnesty laws had never been supported by referenda. Even so, there was real hope about the possibility for trials, particularly from victim groups.

### **Ruling Aftermath: Hope and Initial Compliance**

The *Gelman* case occurred at a propitious domestic and international moment in the movement for international justice that produced a strong sense of optimism about the possibility for compliance with the ruling. Domestically, Uruguay seemed to possess the necessary conditions to produce compliance: a sympathetic government, certain new members of a progressive and independent judiciary, and a strong and persistent civil society. First, regarding governmental support, it was under the left-wing coalition of the Frente Amplio (Tabaré Vázquez 2005-2010 and José Mujica 2010-2015). The coalition passed a host of progressive legislation such as an affirmative action law, education reform for increased funding and autonomous cogovernance, labour regulation, and laws that legalized abortion and same sex marriage, among many other policy efforts.<sup>27</sup> At the time, Freedom House's Freedom in the

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<sup>26</sup> Parente, 'Past Regret, Future Fear'.

<sup>27</sup> Nicolás Bentancur and José Miguel Busequets, 'The Frente Amplio Governments in Uruguay', in *Latin America's Pink Tide: Breakthroughs and Shortcomings*, ed. Steve Ellner (Lanham, MD: Rowman & Littlefield Publishers, 2019), pp. 113-135; Nicolás Bentancur, 'Apuntes para un análisis institucional del Proyecto de Ley General de Educación', in *Encrucijada 2009*, ed. Gerardo Caetano (Montevideo: Fin de Siglo, 2008), pp. 129-40.

World project ranked Uruguay as one of the ‘freest’ countries in all of Latin America, on par with Chile and Costa Rica.<sup>28</sup> Moreover, Vázquez, during his first term in office (2005-2010), had pursued and seen some success in utilizing legal loopholes to the amnesty law that resulted in the prosecution of figures such as Gregorio Álvarez (2009 conviction) and Juan María Bordaberry (2010 conviction).<sup>29</sup> Thus, without the constraints of the amnesty law, and with both a human rights friendly executive and a majority support in Parliament, it seemed like Uruguay had the important condition of governmental support for compliance.<sup>30</sup>

Another factor Uruguay seemed to have in place at the time of the ruling was a progressive and independent judiciary. As Skaar has argued, in the years after the passage of the amnesty law, Uruguayan judges had been more reluctant to invoke international law to challenge impunity as compared to many of their neighbours because of the judiciary’s institutional design, incentive structure, and exposure and lack of tradition in incorporating international human rights norms. Yet, by the time of the *Gelman* ruling in 2011, there had been a generational change in the judges, with more than half of them being appointed after the end of the dictatorship, and many had undergone human rights as part of their legal training.<sup>31</sup> Thus, more progressive judges occupied key positions in the judiciary.

Third, a persistent civil society played a fundamental role in pushing for accountability. Both through the formation of new activist groups and the use of innovative strategies by old and new groups alike, human rights organizations played a large role in the reinforcing and strengthening calls for accountability that capitalized on the *Gelman* decision. As epitomized by

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<sup>28</sup> Puddington et al. (eds.), *Freedom in the World 2010*.

<sup>29</sup> He also agreed to transfer several demands for extradition of Uruguayan citizens to stand trial for crimes committed as part of Operation Condor, something his predecessors had been more reluctant to do.

<sup>30</sup> Skaar points to the importance of a human rights executive in ‘Wavering Courts.’

<sup>31</sup> Skaar, ‘Wavering Courts,’ pp. 507.

the statement of Oscar Urtasun, a member of the Madres y Familiares, the *Gelman* decision ‘transcend[ed]’ the one case, showing that the whole world would be watching countries when they ‘are not doing everything necessary so that those responsible go to jail.’<sup>32</sup>

These domestic conditions were reinforced by strong international momentum, with the *Gelman* decision occurring during the global justice cascade. In neighbouring Argentina alone, ongoing ESMA (Escuela de Mecánica de la Armada) and Operation Condor trials were both underway which centred regional attention on the possibilities of human rights accountability, even decades after transition to democracy.<sup>33</sup> While this shift did not indicate that all violators of human rights would be held accountable, the idea that state officials could and would be held accountable was perhaps at a historic height.

The combination of these factors produced cautious optimism among many Uruguayans who had been seeking justice. For some victims, these domestic and international factors were promising indicators of potential success. Indeed, cases that had been archived because of the amnesty law were reopened and victims filed new cases in court. Several contemporary interviews reveal the way many believed that *Gelman* would make justice possible. For example, Sandra Pelúa, who worked with Hijos por la Identidad y la Justicia contra Olvido y el Silencio (HIJOS) and whose father was disappeared in Argentina, said that she believed the decision

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<sup>32</sup> Luciana Bertoia, ‘Una condena para terminar con la impunidad’, *Página 12*, 25 March 2011, available at [www.pagina12.com.ar/diario/elpais/1-164887-2011-03-25.html](http://www.pagina12.com.ar/diario/elpais/1-164887-2011-03-25.html).

<sup>33</sup> For more on the ESMA trials, see, Centro de Estudios Legales y Sociales, ‘ESMA Mega-Case’, available at [www.cels.org.ar/especiales/megacausaesma/en/](http://www.cels.org.ar/especiales/megacausaesma/en/). For more on Operation Condor trials, see Francesca Lessa, ‘Operation Condor on Trial: Justice for Transnational Human Rights Crimes in South America’, *Journal of Latin American Studies*, 51:2 (2019): pp. 409-439; Francesca Lessa, ‘Justice Beyond Borders: The Operation Condor Trial and Accountability for Transnational Crimes in South America’, *International Journal of Transitional Justice*, 9:3 (2015), pp. 494-506.

would ‘open up investigations...one has to hope that things will happen’.<sup>34</sup> Veronica Matos, also a member of HIJOS whose father was disappeared in 1982, had her case reopened after the *Gelman* decision. She expressed cautious optimism that the case ‘can finally be investigated’.<sup>35</sup> Valentín Enseñat, whose father was disappeared in 1977, explained that *Gelman* produced the search for more remains, and challenged the collective acceptance that there was no information on the disappeared. He hoped that the Court’s decision would push the state to offer more information on what happened to the disappeared ‘in a more systematic way’.<sup>36</sup>

According to Ariela Peralta, one of the lawyers in the case, this was one of the intended goals. She explained that Gelman’s case was an example of human rights groups’ ‘strategic litigation’ to require the state to produce a roadmap for how to address human rights abuses. In the aftermath of the decision, she elaborated that the process ‘opened many doors, mobilized both the victims’ organizations, generated debate, discussions, gave arguments for legal action, but also from the State itself, the political system began to move’. She argued that having seen Uruguay condemned internationally generated debates at the political and societal level: ‘it was really an explosion’.<sup>37</sup>

Gabriel Mazzarovich perhaps best encapsulates the perspectives of many after the decision. Mazzarovich had multiple family members, including his father, imprisoned for long periods of the dictatorship, and he himself had been active in various clandestine movements, including the student movement, during this time. The military arrested and tortured him in June

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<sup>34</sup> Abby Goldberg interview with Sandra Pelúa, 17 March 2012, Montevideo, Uruguay. The authors wish to thank Abby Goldberg for sharing her interview transcripts.

<sup>35</sup> Abby Goldberg interview with Veronica Matos, 17 March 2012, Montevideo, Uruguay.

<sup>36</sup> Abby Goldberg interview with Valentín Enseñat, 17 March 2012, Montevideo, Uruguay.

<sup>37</sup> Abby Goldberg interview with Ariela Peralta, 22 March 2012, Montevideo, Uruguay.

1981 when he was only 16 years old. In an interview in 2012, he explained that despite fighting against impunity for 25 years, the *Gelman* decision offered ‘new paths for society’. He acknowledged that it would still require hard work from judges and prosecutors ‘who put everything on the line’ to work for prosecutions; for archaeologists working to uncover bodies in the military barracks; and for victims, ‘who are at the centre of everything’ and continue to speak out, denounce, and ‘overcome pain’, to work for justice. Yet, despite the obstacles all these people faced, Mazzarovich noted that the judgment offered support for all of those who had been working so hard domestically for years, and finally saw a real opportunity for justice.<sup>38</sup>

At first, this optimism seemed well placed as Uruguay complied with several of the Inter-American Court’s orders, including overturning the Ley de Caducidad. Indeed, human rights groups put persistent pressure on the government by using the *Gelman* decision to argue for Parliament to overturn the amnesty law.<sup>39</sup> It was a successful tactic. In June 2011, President Mujica issued Decree 323, which repealed key parts of the amnesty law.<sup>40</sup> Then, in October 2011, Parliament passed Law 18.831, effectively cancelling all the provisions contained in the Ley de Caducidad and eliminating the main barrier to prosecutions as proscribed in the *Gelman* decision.<sup>41</sup>

Uruguay also responded to the Court’s order for an economic reparations program. Reparations are traditionally understood as an important step for a state to both acknowledge and address the harms suffered. An earlier reparations law from 2009, Law 18.598, recognized the

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<sup>38</sup> Abby Goldberg interview with Gabriel Mazzarovich, 19 March 2012, Montevideo, Uruguay.

<sup>39</sup> Burt, Lessa, and Fried Amilivia, ‘Civil Society’.

<sup>40</sup> *Gelman v. Uruguay*, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. (20 March 2013), para. 28.

<sup>41</sup> *Gelman v. Uruguay*, Monitoring Compliance with Judgment, para. 45.

right of victims to receive reparations, but included an article which prevented a victim who has agreed to receive any form of a reparation from seeking legal remedy.<sup>42</sup> In essence, it offered monetary reparations but only if the victim agreed not to pursue their case in court. The law had been largely repudiated as the government attempting to strike a bargain for limited justice.<sup>43</sup> Therefore, when Uruguay paid the US\$513,000 to the Gelmans, as ordered by the judgment, it signalled a change from a reparations program based on trading silence for justice to one that acknowledged that financial reparations and justice could both be sought under international law.

In March 2012, also in compliance with the Inter-American Court's judgment, President José Mujica made a public acknowledgement of state responsibility for crimes committed during the dictatorship. In this formal public apology, he both accepted the state's role in the disappearance and promised to continue to comply with the Court's ruling to look for María Claudia's remains. Enseñat explained that the apology was 'a milestone...because it made explicit the state's responsibility'.<sup>44</sup> The same day, Uruguay unveiled a commemorative plaque at the SID building where María Claudia had been detained in Uruguay, complying with another measure that had been part of the Court's ruling. Macarena expressed her belief that these measures were not the end of the battle, but rather a starting point for even better things to come, especially for those still waiting for justice.<sup>45</sup> In the first two years after the *Gelman* judgment, Uruguay thus appeared to be well on its way to compliance.

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<sup>42</sup> Ekaterina Sivolobova, 'Uruguay: Approaches to the Expiry Law', *Jurist: Legal News and Research*, 10 June 2010, available at [www.jurist.org/commentary/2010/06/uruguay-approaches-to-the-expiry-law/](http://www.jurist.org/commentary/2010/06/uruguay-approaches-to-the-expiry-law/).

<sup>43</sup> For more on the reparations law, and its shortcomings, see Ñusta Carranza Ko, *Truth, Justice, and Reparations in Peru, Uruguay, and South Korea: The Clash of Advocacy and Politics* (Singapore: Palgrave Macmillan, 2021), pp. 173-177.

<sup>44</sup> Abby Goldberg interview with Valentín Enseñat.

<sup>45</sup> 'Mujica asumió la "responsabilidad jurídica y ética" por los crímenes de la dictadura', *Página 12*, 21 March 2013, available at [www.pagina12.com.ar/diario/ultimas/20-190125-2012-03-21.html](http://www.pagina12.com.ar/diario/ultimas/20-190125-2012-03-21.html).



## Doubt, Pushback, and Uncompliance

Even as Uruguay initially complied with the Inter-American Court's rulings, there was concern among legal scholars about the legitimacy of the Court's invalidation of Uruguay's amnesty law. The *Gelman* decision followed the Inter-American Court's jurisprudence on the illegitimacy of amnesty laws, but scholars noted key differences between Uruguay's amnesty law and laws imposed in other Latin American states. As Roberto Gargarella explains, the Inter-American Court did not believe in the 'democratic legitimacy' of Uruguay's law, namely, the two civilian referenda in 1989 and 2009 that voted to uphold the law. In essence, the Court argued that a majority cannot vote on rights that are guaranteed in the American Convention on Human Rights. The Court also referenced the rulings of domestic courts in other countries that placed limits on referenda that restricted the rights of minority groups, like those of same-sex couples and migrants, to further bolster its position. Yet, the two referenda marked a stark contrast between Uruguay and other amnesty laws in the region that were imposed unilaterally by the military, often upon leaving power.<sup>46</sup>

These nuances of the Court's decision to overturn Uruguay's amnesty law created opportunities for pushback to arise, culminating in two events in February 2013 that had lasting consequences for Uruguay's compliance with the *Gelman* decision and prosecution of dictatorship-era cases. The first major setback occurred on 13 February 2013 when the Supreme Court of Justice (SCJ) informed Mariana Mota, a judge who was one of the strongest champions of human rights trials in the country, of its decision to transfer her from her current criminal post

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<sup>46</sup> Roberto Gargarella, 'Democracy and Rights in *Gelman v. Uruguay*', *AJIL Unbound*, 109 (2015), pp. 115-119.

to civilian jurisdiction.<sup>47</sup> In 2013, Mota alone had more than fifty cases under investigation on her docket after the flood of cases began to reach the courts. The SCJ announced her transfer without explanation, a practice that Uruguay had utilized in the past when human rights issues reached the court system through creative legal maneuvering around the Ley de Caducidad.<sup>48</sup> The difference now was that the amnesty law had been overturned, with the express purpose of removing impediments to pursuing justice. Yet, the same tactic of removing judges was employed to prevent cases from moving forward, in violation of the *Gelman* ruling. The move produced large demonstrations and denunciations, both domestically and internationally.<sup>49</sup>

Second, one week after Mota's transfer, on 22 February 2013, the SCJ invalidated Articles 2 and 3 of Law 18.831. Displaying an overall conservative position on the issue of the amnesty law that had been consistent since the transition back to democratic rule, the SCJ found that the reclassification of dictatorship-era crimes as crimes against humanity was unconstitutional, as Uruguay had not recognized crimes against humanity until after transitioning to democracy.<sup>50</sup> Thus, dictatorship-era crimes were common crimes and subject to the statute of limitations that had elapsed.<sup>51</sup> The ruling effectively meant that the key provisions of the

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<sup>47</sup> 'Mariana Mota trasladada a juzgado civil', *La Diaria*, 14 February 2013, available at <https://ladiaria.com.uy/politica/articulo/2013/2/mariana-mota-trasladada-a-juzgado-civil/>. Mariana Mota was an important member of the team that convicted Juan María Bordaberry, the civilian head of state for the military dictatorship during the first four years of its rule. When the amnesty law was still in effect, Mota argued that the court could hear arguments for the case since Bordaberry was a civilian and therefore not covered by the amnesty law which only protected the military. Bordaberry was successfully convicted in November 2010 and sentenced to thirty years. Mota was the judge to hand down the conviction. For more information on Mariana Mota and the Boradberry trial see Ellen Lutz and Caitlin Reiger, *Prosecuting Heads of State* (New York: Cambridge University Press, 2009).

<sup>48</sup> Francesca Lessa and Leigh Payne, *Amnesty in the Age of Human Rights Accountability: Comparative and International Perspectives* (New York: Cambridge University Press, 2012), pp. 146

<sup>49</sup> 'Carta Abierta de académicos internacionales por DDHH', *La República*, 16 February 2013, available at <https://diariolarepublica.net/carta-abierta-de-academicos/>; Washington Office on Latin America, 'Uruguay Must Overcome Impunity', 15 February 2013, available at <http://www.wola.org/node/3623>.

<sup>50</sup> Christian Jecov Schallenueller, 'Transitional Justice in Brazil and Uruguay: Different Solutions to the Tension Between Human Rights and Democracy', unpubl. man., FLACO-ISA, 2014.

<sup>51</sup> Activists have criticized the SCJ's decision as 'glaringly obvious' in its inconsistency with international law in

amnesty law were brought, as Amnesty International put it, ‘back to life’ and that many gross human rights violations committed under the dictatorship could not be prosecuted.<sup>52</sup>

The Inter-American Court took note of this outcome when it monitored compliance in the *Gelman* case one month later in March 2013.<sup>53</sup> Interestingly, at the time of the compliance hearing, which took place in February, Uruguay’s actions (Decree 323 and Law 18.831) were ‘assessed positively by the Inter-American Court, because they were designed to comply with the judgment in the *Gelman* case’.<sup>54</sup> However, the final report, published 20 March 2013, came after the Mota transfer and the SCJ decision and reflected this rapidly shifting landscape.

In its monitoring report, the Court verified that Uruguay had fully complied with four orders, partially complied with four other orders, and was non-compliant with the remaining five measures. The order to invalidate the amnesty law was partially complied with: while Article 1 of Ley 18.831 did repeal the amnesty law, the SCJ’s recent judgment invalidating Articles 2 and 3 ‘constitutes an obstacle to full compliance with the Judgment’.<sup>55</sup> The Inter-American Court reasoned that the invalidation of Articles 2 and 3 would severely impact the ability of human rights investigations and prosecutions, including in the *Gelman* case, to move forward because the law ‘appears to have little practical utility if, owing to subsequent court rulings, such crimes are declared expired’.<sup>56</sup>

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general and international human rights law in particular. Felipe Michelini, ‘Reflections on Uruguayan Law no. 18831 a Year After its Enactment’, *Human Rights Brief* 20: 3 (2013), pp. 7.

<sup>52</sup> Amnesty International, ‘Uruguay: Key Human Rights Concerns’, Amnesty International Submission to the UN Universal Periodic Review January-February 2014, AMR 52/001/2013, available at [www.amnesty.org/ar/wp-content/uploads/2021/06/amr520012013en.pdf](http://www.amnesty.org/ar/wp-content/uploads/2021/06/amr520012013en.pdf).

<sup>53</sup> To ensure compliance with its orders, the Inter-American Court monitors implementation of its ordered remedies and issues a series of monitoring reports in each case.

<sup>54</sup> *Gelman v. Uruguay*, Monitoring Compliance with Judgment, Separate Opinion of Judge Eduardo Ferrer MacGregor Poisot Concerning the Order of the Inter-American Court of Human Rights of March 20, 2013, para. 7.

<sup>55</sup> *Gelman v. Uruguay*, Monitoring Compliance with Judgment, para. 104.

<sup>56</sup> *Gelman v. Uruguay*, Monitoring Compliance with Judgment, para. 54.

Thus, 2013 constituted a year of major pushback on the seeming progress that was made in the ruling's initial aftermath. The condition of a progressive judiciary willing to enact measures that would ensure compliance unravelled at both the personnel level and in light of the Supreme Court's ruling. While the SCJ had been consistently conservative dating back to the democratic transition, the transfer of Judge Mota was a true impediment to a progressive judiciary. The loss of a progressive judge presiding over dictatorship-era prosecutions impeded the ability of the judiciary to comply with the ruling, as the prosecutions on Mota's docket could not proceed without her. As a result of the SCJ's ruling, other progressive judges were unable to proceed on cases involving dictatorship-era crimes. While civil society remained engaged, particularly in fervent protest on both setbacks, the judiciary as a willing partner and as a necessary condition for full compliance seemed to dissipate.

### **Continued Backsliding**

After 2013, Uruguay's progress toward full compliance was limited at best. Further backlash to the *Gelman* decision occurred at both the executive and judicial level, threatening the initial optimism that had accompanied the decision.

At the executive level, the Frente Amplio party spent only limited political capital on accountability efforts with control of both the presidency and the Parliament. After the 2013 monitoring report, President Mujica still had two more years in office. His presidency was characterized by a flurry of progressive legislation.<sup>57</sup> Yet,

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<sup>57</sup> Mujica received a great deal of international attention from the English-speaking press for his progressive politics and modest lifestyle. See, for example: Vladimir Hernandez, 'Jose Mujica: The world's "poorest" president', *BBC*, 15 November 2022, available at [www.bbc.com/news/magazine-20243493](http://www.bbc.com/news/magazine-20243493) and Simon Romero, 'After Years of

after the public apology and *placa de memoria*, Mujica made little progress on accountability issues and refused to counter the decisions made to transfer Mota or overturn parts of Ley 18.831. While himself a victim of the nation's dictatorship—he suffered under 13 years of imprisonment and torture, most of it in solitary confinement—opening discussions about accountability also left him vulnerable to discussions about his participation in the leftist guerrilla group, the Tupamaros. Throughout Southern Cone transitions back to democratic rule, the military and those on the right have overstated and exaggerated claims that equate state violence and the revolutionary actions of leftist guerrilla groups. Yet, Mujica's silence was potentially a political calculation to allow him to focus on passing progressive legislation without being dragged into accountability politics and quite possibly opening himself up to criticism that might undermine his larger agenda.<sup>58</sup>

Following Mujica's inaction, Tabaré Vázquez was elected to his second non-consecutive term and was inaugurated in March 2015. Initially, many activists were optimistic about judicial possibilities with Vázquez's return to government, especially since he had made advances in accountability during his first term in office and would now take the oath without the official constraints of the amnesty law. On assuming office again, he launched a Working Group on Truth and Justice.<sup>59</sup> This prominent body was tasked with gathering information on past crimes, as well as advancing trials and reparations. Comprised of well-known and well-regarded figures across the country, the move was seen as an important political step and commitment by the

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Solitary, an Austere Life as Uruguay's President', *New York Times*, 4 January 2013, available at [www.nytimes.com/2013/01/05/world/americas/after-years-in-solitary-an-austere-life-as-uruguays-president.html](http://www.nytimes.com/2013/01/05/world/americas/after-years-in-solitary-an-austere-life-as-uruguays-president.html).

<sup>58</sup> An example of this criticism emerged when Mujica marched in the *Marcha del Silencio* in 2014, but failed to take any concrete policy actions, demonstrating his sympathy with victim families but a lack of willingness to take action from his position as president.

<sup>59</sup> Felipe Mechilini provided the *decreto* and *nombramiento* establishing the Working Group to one of the authors (anonymized for peer review) in 2017. Decreto del Grupo de Trabajo de Verdad y Justicia, May 19, 2015.

Vázquez government to advance the cause of accountability.<sup>60</sup> It seemed to recommit the executive branch to measures of compliance after two years of stagnation.

This governmental pressure was combined with momentum from below with the continued strength of civil society.<sup>61</sup> For example, in October 2017, several human rights groups and unions launched a campaign on social media and in the streets to highlight judicial delays and to push national courts to proceed with trials. Under the hashtags #26Oct and #nohayderecho, the online campaign was accompanied by a march in Montevideo that coincided with the opening of the 165<sup>th</sup> Regular Session of the Inter-American Commission on Human Rights, which was taking place in Montevideo for the first time.<sup>62</sup> Powerful testimonies by victims about their experiences of torture and political imprisonment were broadcast across Twitter and Facebook. This new media campaign showed men and women sitting in or around the former detention centres, a powerful visual message about the physical location of the crimes and the enduring pain they caused.<sup>63</sup> Alongside gaining international attention for the Commission proceedings, civil society groups hoped to pressure Vázquez for further commitments to justice.

Vázquez's Working Group on Truth and Justice, however, proved largely symbolic, demonstrating the precarity of executive political will as a necessary factor for compliance. The Working Group made little progress in its stated goal of proceeding with trials. Amnesty International's 2017/18 report on Uruguay noted that the body had 'not achieved concrete

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<sup>60</sup> 'Uruguay moves to tackle dictatorship crimes', *Buenos Aires Herald*, 13 October 2015.

<sup>61</sup> For more on the work human rights groups did leading up to the Gelman decision and in its aftermath, see Burt, Lessa, and Fried Amilivia, 'Civil Society'.

<sup>62</sup> Diego Damián, "#nohayderecho," *YouTube*, 20 October 2017, available at [www.youtube.com/watch?v=Dw-mMFR5xXc](http://www.youtube.com/watch?v=Dw-mMFR5xXc)

<sup>63</sup> Liliana Pertuy, "#nohayderecho," *YouTube*, 20 October 2017, available at [www.youtube.com/watch?v=7S-pkqT4LTQ](http://www.youtube.com/watch?v=7S-pkqT4LTQ).

results’.<sup>64</sup> Even the head of the Working Group, Felipe Michelini, admitted that while initial expectations were very high, he ‘always was pessimistic’ about the possibilities for advancing trials due to the length of time that had passed since the violations had occurred and the ‘mafia agreement/pact among perpetrators not to talk’ about what happened.<sup>65</sup> These shortcomings were further confirmed within Uruguay when the Madres y Familiares de Uruguayos Detenidos-Desaparecidos, decided to leave the Working Group and withdraw their support and cooperation. In a press release, the organization expressed its frustration with the slow pace of the Working Group’s attempts to advance its objectives and claimed that its stagnation had yielded no new information or advances towards retributive justice.<sup>66</sup> Instead, the organization committed itself to working for justice through other means. Vázquez’s government and Parliament, believing that they had done their part by setting up the Working Group, displayed little additional political will to overcome the Working Group’s inadequacies in the face of judicial obstinacy.<sup>67</sup> By August 2019, the executive had dissolved the group and transferred some of its mandates to the Institución Nacional de Derechos Humanos y Defensoría del Pueblo (INDDHH).<sup>68</sup>

Even civil society endured attacks during the years of backsliding, signalling a further backlash to the justice initiatives from certain sectors of the population. First, in 2016, the offices of the Forensic Anthropology Investigation Group (GIAF) were broken into, and evidence they

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<sup>64</sup> Amnesty International, *Amnesty International Report 2017/2018* (London: Amnesty International Ltd., 2018), pp. 389.

<sup>65</sup> Author interview with Felipe Michelini, 24 July 2018, Skype.

<sup>66</sup> Madres y Familiares de Uruguayos Detenidos Desaparecidos, ‘Comunicado a la Opinión Pública’, 1 March 2018, available at <https://desaparecidos.org.uy/2018/02/comunicado-a-la-opinion-publica/>; ‘Familiares dejan grupo por “Verdad y Justicia”’, *El País*, 1 March 2018, available at [www.elpais.com.uy/informacion/familiares-dejan-grupo-justicia.html](http://www.elpais.com.uy/informacion/familiares-dejan-grupo-justicia.html)

<sup>67</sup> Michelini Interview; Sebastian Cabrera, ‘Gobierno mostró falta de interés por desaparecidos’, *El País*, 11 March 2019, available at [www.elpais.com.uy/informacion/politica/gobierno-mostro-falta-interes-desaparecidos.html](http://www.elpais.com.uy/informacion/politica/gobierno-mostro-falta-interes-desaparecidos.html).

<sup>68</sup> ‘Ejecutivo disuelve Grupo por Verdad y Justicia y pasará competencias a la INDDHH’, *El País*, 12 August 2019, available at [www.elpais.com.uy/informacion/politica/ejecutivo-disuelve-grupo-justicia-pasara-competencias-inddhh.html](http://www.elpais.com.uy/informacion/politica/ejecutivo-disuelve-grupo-justicia-pasara-competencias-inddhh.html)

had uncovered regarding crimes of the dictatorship were stolen.<sup>69</sup> Then, in March 2017, death threats were made against authorities and human rights defenders who had been working to advance the possibility of trials, referencing the recent suicide of General Pedro Barneix, who killed himself right before he was to be arrested for killing Aldo Perrini during a torture session in 1974.<sup>70</sup> The anonymous death threat stated that ‘the suicide of General Pedro Barneix will not remain unpunished...no more suicides of unjust prosecutions will be accepted. From now on, for every suicide, we will kill three people selected at random from the following list’.<sup>71</sup> The list included the Uruguayan Defence Minister, a prosecutor of the court, the Director of the National Human Rights Institute, human rights lawyers, and foreign scholars. Human rights groups condemned the note, seeing the letter as a clear attempt to thwart efforts to continue pushing for trials. However, the government did not respond publicly to the note and never provided any information regarding the status of investigations into the source of the threats, even as many suspect that the emails came from former members of the military and police.<sup>72</sup>

Despite these various challenges, the most positive action to occur during this period was under the auspices of Law 19.550, the *Creación de Fiscalía Especializada en Crímenes de Lesa Humanidad*, when Vázquez and Parliament helped set up an Office of the Special Prosecutor for Crimes Against Humanity, aimed specifically at advancing trials. It was established on 22

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<sup>69</sup> ‘Uruguay: Thieves Steal Evidence of Dictatorship’s Crimes’, *telesur*, 31 March 2016, available at [www.telesurenglish.net/news/Uruguay-Thieves-Steal-Evidence-of-Dictatorships-Crimes-20160331-0021.html](http://www.telesurenglish.net/news/Uruguay-Thieves-Steal-Evidence-of-Dictatorships-Crimes-20160331-0021.html).

<sup>70</sup> ‘Imputado por el homicidio de Aldo Perrini. Se suicidó el general Pedro Barneix’, *Resumen Latinoamericano*, 5 September 2015, available at [www.resumenlatinoamericano.org/2015/09/05/uruguay-imputado-por-el-homicidio-de-aldo-perrini-se-suicido-el-general-pedro-barneix/](http://www.resumenlatinoamericano.org/2015/09/05/uruguay-imputado-por-el-homicidio-de-aldo-perrini-se-suicido-el-general-pedro-barneix/).

<sup>71</sup> Washington Office on Latin American, ‘International Organizations Denounce Death Threats against Human Rights Defenders in Uruguay’, 30 March 2017, available at [www.wola.org/2017/03/international-organizations-denounce-death-threats-human-rights-defenders-uruguay/](http://www.wola.org/2017/03/international-organizations-denounce-death-threats-human-rights-defenders-uruguay/).

<sup>72</sup> Front Line Defenders, ‘Failure to Properly Investigate Death Threats Against Human Rights Defenders’, 5 February 2018, available at [www.frontlinedefenders.org/en/case/failure-properly-investigate-death-threats-against-human-rights-defenders](http://www.frontlinedefenders.org/en/case/failure-properly-investigate-death-threats-against-human-rights-defenders).



February 2018, and began collecting evidence to file cases. Yet, by the time Vázquez left office, it was unclear whether the office would produce any results, as even the cases it started to work on ran into defendant petitions of unconstitutionality based on the statute of limitations.

If these were the conditions under a leftist Frente Amplio government, Luis Lacalle Pou's election as a candidate from the centre-right Blanco Party offered no cause for optimism. The 2019 election was perhaps most noteworthy for the emergence of a new political party, Cabildo Abierto, led by Guido Manini Ríos. Manini Ríos is the former chief commander of the armed forces and is open in his praise of the former dictatorship. Vázquez had dismissed him from his position in the military after he criticized even the limited steps the judiciary took to pursue accountability for the dictatorship's crimes.<sup>73</sup> He even openly campaigned to have the Ley de Caducidad formally reinstated. Several candidates who ran for office on the party's ticket were also former members of the Juventud Uruguaya de Pie, a far-right extremist group with paramilitary connections that operated under the military government.<sup>74</sup> In order to form a governing coalition, Lacalle Pou and the Blancos linked with the Cabildo Abierto after the election. While Lacalle Pou was perhaps never a strong advocate out on the streets pursuing justice, the new governing coalition meant that instead of perhaps being neutral on these issues, he was bound to entertain the far right's attempts to reverse any progress. Indeed, once in office, the Cabildo Abierto continued to push for efforts to resurrect the amnesty law, as well as introduce other legislation to further impunity, such as, under the guise of addressing overcrowding in prisons during COVID-19, granting house arrest to all convicted persons over

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<sup>73</sup> César Barrios, 'Quién es Guido Manini Ríos, el "Bolsonaro" uruguayo', *InfoBae*, 12 March 2019, [www.infobae.com/america/america-latina/2019/03/12/quien-es-guido-manini-rios-el-bolsonaro-uruguayo-al-que-tabare-vazquez-ceso-como-jefe-del-ejercito/](http://www.infobae.com/america/america-latina/2019/03/12/quien-es-guido-manini-rios-el-bolsonaro-uruguayo-al-que-tabare-vazquez-ceso-como-jefe-del-ejercito/).

<sup>74</sup> Gerardo Caetano, 'The Far Right is Growing in Uruguay', *Jacobin*, 24 November 2019, available at [www.jacobinmag.com/2019/11/uruguay-elections-frente-amplio-national-party](http://www.jacobinmag.com/2019/11/uruguay-elections-frente-amplio-national-party).

the age of 65. If passed, the law would immediately impact the two-dozen former military and civilian personnel that had been convicted of crimes committed during the dictatorship.<sup>75</sup> As of submission, the law is still being considered and pushed by the Cabildo Abierto.

Moreover, the judiciary remained intransigent in many cases, further stymying efforts for justice. In late 2017, for example, the Supreme Court issued a ruling that displayed its commitment to upholding the statute of limitations argument. In this trial, a woman from the city of Tacuarembó, known as “A.A.” in court documents, accused the military of illegally detaining and torturing her in 1972 as part of its larger political project. The Supreme Court, however, responded with a ruling that the violations committed did not constitute crimes against humanity and therefore were subject to statutes of limitations whose expiry dates had already passed. This was only one of multiple cases that received the same decision by the Supreme Court in this period, demonstrating a continued judicial intransigence on issues of accountability for the dictatorship, despite the *Gelman* decision.<sup>76</sup>

Even the limited cases that have progressed in the judiciary lacked full compliance with the *Gelman* decision. In 2017, for instance, a domestic court found five members of the armed forces guilty of the murder of María Claudia Gelman. The ruling was upheld despite two appeals in 2018 and 2020.<sup>77</sup> While it was significant that the men were held accountable, victim groups expressed dissatisfaction that it still did not satisfy Uruguay’s compliance obligations in the

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<sup>75</sup> Ellen Salgueiro, ‘Uruguay: A Law to Benefit Perpetrators of Crimes Against Humanity?’ *Justice Info*, 30 November 2021, available at [www.justiceinfo.net/en/84967-uruguay-law-benefit-perpetrators-crimes-against-humanity.html](http://www.justiceinfo.net/en/84967-uruguay-law-benefit-perpetrators-crimes-against-humanity.html).

<sup>76</sup> For other cases, see, for example, ‘Nueva sentencia de la SCJ declaró inconstitucional la imprescriptibilidad de delitos de lesa humanidad en desaparición de Eduardo Pérez’, 9 February 2018, *La Diaria*, available at <https://ladiaria.com.uy/articulo/2018/2/nueva-sentencia-de-la-scj-declaro-inconstitucional-la-imprescriptibilidad-de-delitos-de-lesa-humanidad-en-desaparicion-de-eduardo-perez/>.

<sup>77</sup> Leonardo Haberkorn, ‘Ratifican condena a Gavazzo, Silveira, Arab, Medina, y Vázquez por homicidio de María Claudia García de Gelman’, *El Observador*, 5 September 2020, available at [www.elobservador.com.uy/nota/suprema-corte-ratifico-condena-a-gavazzo-silveira-arab-medina-y-gilberto-vazquez-por-homicidio-de-maria-claudia-20209517528](http://www.elobservador.com.uy/nota/suprema-corte-ratifico-condena-a-gavazzo-silveira-arab-medina-y-gilberto-vazquez-por-homicidio-de-maria-claudia-20209517528).

*Gelman* case. In particular, the conviction was not for the ongoing crime of forced disappearance, nor did it establish intention behind the crime, locate her remains, or establish the full truth about what happened in her disappearance.<sup>78</sup> Human rights lawyer Pablo Chargoña also noted that the 2017 conviction itself did not reflect an inflection or change in any way of the broader sense of justice for the crimes committed.<sup>79</sup>

Thus, the years following the 2013 monitoring report showed sustained activism by civil society but no substantial progress in terms of compliance. The lack of compliance can be attributed to continued challenges from the judicial and executive branches, which was a recurring theme in the Inter-American Court's next (and, thus far, last) monitoring report on *Gelman* in 2020. The Court was sceptical of the judiciary's willingness to prosecute dictatorship-era crimes, noting both the limits of the 2017 murder conviction in the *Gelman* case as well as the continued imposition of the statute of limitations to block further prosecutions. Furthermore, the Court questioned the executive's commitment to human rights training programs and protocols related to the identification of remains.<sup>80</sup> Overall, Uruguay's continued impunity challenges during this period further underscore the necessity of political will and judicial independence, as well as the insufficiency of a strong civil society alone to achieve compliance.

## **Conclusion**

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<sup>78</sup> Center for Justice and International Law, 'Condena en caso Gelman no satisface obligaciones internacionales del Estado uruguayo', 5 April 2017, available at <https://cejil.org/comunicado-de-prensa/condena-en-caso-gelman-no-satisface-obligaciones-internacionales-del-estado-uruguayo/>.

<sup>79</sup> Pablo Chargoña email correspondence with authors, 20 March 2023.

<sup>80</sup> For these reasons, partial compliance was noted with four of the outstanding orders. *Gelman v. Uruguay*, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. (19 November 2020).

Uruguay has emerged from its period of dictatorship as one of the strongest democracies in South America. Yet, it has struggled on accountability and even fallen behind many of its neighbours in the victims' quest for justice. The Ley de Caducidad meant that for much of the first two and a half decades after the country's transition back to democratic rule, cases that reached a successful conclusion occurred only through creative legal manoeuvring and loopholes. The amnesty law's de facto endurance in the first ten years after the official repeal, due to the judiciary's invocation of statute of limitations and other impediments, led Uruguayans to look abroad for opportunities to pursue justice—including Argentina (Operation Condor Trials), Italy (Troccoli case), and, of course, through the Inter-American Human Rights system.<sup>81</sup>

Some activists hoped pressure from abroad, both in the form of seeing Uruguayans tried in foreign courts as well as through the recommendations of the Inter-American system would compel domestic action.<sup>82</sup> Indeed, civil society actors used these cases to advocate for movement from the judiciary, and in recent years, particularly strong advocacy has emerged from children of victims and those who grew up in shadow of the dictatorship's legacy. Yet, even in the aftermath of the law's official repeal, the three conditions necessary for compliance have not been consistently present: although civil society has endured, despite threats to the lives and work of activists, neither the executive nor judiciary have been reliable partners or actors in compliance efforts. Substantial progress has been accompanied by both backlash and a lack of political will—particularly from the executive of both parties that have held the presidency and

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<sup>81</sup> See among others: Debbie Sharnak, 'Operation Condor Trials Abroad: The Innovation and Domestic Constrains of Transnational Prosecution', in Rosario Figari Layus and Ulrike Capdepón (eds.), *The Impact of Human Rights Prosecutions: Insights from European, Latin American, and African Post-Conflict Societies* (Leuven: Leuven University Press, 2021), pp. 123-142; Lessa, 'Justice Beyond Borders'; and Lessa, 'Operation Condor on Trial'.

<sup>82</sup> Alexandra Huneeus, 'Judging from a Guilty Conscience: The Chilean Judiciary's Human Rights Turn', *Law and Social Inquiry*, 35:1 (2010): pp. 99-135.

an intransigent judiciary. This has resulted in Uruguay's failure to investigate and punish those responsible for crimes against humanity in the ten-year aftermath of the *Gelman* decision. Thus, although civil society remains strong, this is but a necessary – and insufficient – condition for compliance.

Uruguay's experience with implementing the compliance orders in *Gelman* demonstrates the fundamental challenges of compliance, particularly with initiating trials, even in established democracies. The important conclusion here is that neither political party was particularly eager to advance human rights justice initiatives. Even the leftist coalition of the Frente Amplio struggled to move trials forward substantially. When it held the presidency, both Mujica and Vázquez used their political will to advance other progressive priorities, perhaps at the expense of justice initiatives. It was easier for them to make formal apologies, hang plaques, and create institutions (even if they were understaffed and under resourced). They proved largely unwilling, however, to spend the necessary political capital to move forward trials that would comply with the order to investigate and punish offenders.<sup>83</sup>

It is also notable that backlash to international justice has grown over time, rather than decreased. There is an emerging tension within Uruguay where certain sectors of the citizenry fail to look to the Inter-American Court for human rights guidance, and instead see its decisions as a violation of state sovereignty. Indeed, as early as 2012, just a year after the *Gelman* decision, Pablo Chargoña argued that various politicians began to discredit or ignore the Court, claiming a violation of sovereignty or disputing the Court's authority, even though Uruguay had committed

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<sup>83</sup> Kate Cronin-Furman, for examples, orders that this is a form of quasi-compliance, but her research focuses on more authoritarian states, whereas our research suggests that quasi-compliance is also a tactic used by democratic governments. Kate Cronin-Furman, *Hypocrisy and Human Rights: Resisting Accountability for Mass Atrocities* (Ithaca, NY: Cornell University Press, 2022).

to the Court's jurisdiction.<sup>84</sup> This resistance grew over time from various political sectors and with the creation of new political parties.

The increased backlash is perhaps most evident in Uruguay's actions during the hearings and subsequent aftermath of a second dictatorship-era case, *Maidanik y Otros v. Uruguay*, which the Court took up exactly ten years after the *Gelman* decision. During the 2021 hearings before the Inter-American Court, Uruguay, now under a Blanco executive, actually argued that that the Court should not compel further action because it was already in compliance with its international human rights obligations. This argument came from the centre-right government and in clear contradiction with the 2020 monitoring report in the *Gelman* case. The antagonist position of Uruguay indicates a shift from the 2010 hearings in *Gelman* (where there was no contestation) and is a window into Uruguay's perspective on its commitment to only particular international obligations. When the Court issues a judgment in December 2021, Uruguay's response to the *Maidanik* decision finding it responsible for dictatorship-era crimes was even more stilted than its response to *Gelman*. Although limited in prosecutions in *Gelman*, the Uruguayan state did stage a public and highly praised ceremony accepting responsibility, at which President Mujica gave a formal acknowledgement and apology. A similar ceremony was ordered in the *Maidanik* ruling, but met with a more muted response, as President Lacalle Pou did not attend the ceremony and sent his vice president instead, to the consternation of the victims and their families.<sup>85</sup>

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<sup>84</sup> Abby Goldberg interview with Pablo Chargoña, 3 March 2012, Montevideo, Uruguay.

<sup>85</sup> 'Estado uruguayo admite su culpabilidad en los asesinatos de las "Muchachas de Abril" de 1974', *MercoPress*, 16 June 2023, available at <https://es.mercopress.com/2023/06/16/estado-uruguayo-admite-su-culpabilidad-en-los-asesinatos-de-las-muchachas-de-abril-de-1974>.

There are also additional challenges that abound with compliance, even as small steps are being taken to pursue justice. For example, at the time of the *Maidanik* ruling, the Special Prosecutor's Office had a head prosecutor, two deputy lawyers, and an administrative official. A third deputy prosecutor was added subsequently, which was a positive change, but still insufficient for the number of cases being presented by victim claimants. Further, the extremely delayed nature of these proceedings demonstrates their shortcomings. The *Gelman* decision was a full 26 years after the transition back to democratic rule, and by the time cases came to courts ten years later, some of the cases involved people who had died before or even during the course of the hearings. Most notably, within a two-week period in 2021, José Nino Gavazzo and Eduardo Klastornick passed away, both of whom were implicated in the case of extrajudicial executions in the *Maidanik* case as well as many others. Their deaths highlight another issue facing the Uruguayan judiciary when considering the Inter-American Court's compliance orders—the advanced age of many defendants who might die before their victims are able to receive justice in domestic courts.

Our research supports the idea that a strong civil society, a willing judiciary, and a strong executive are all needed for some of the more difficult measures of compliance to be implemented. In addition, it also demonstrates the ways a longer analysis of the timeframe for compliance reveals the non-linearity of the compliance process, replete with backsliding and non-compliance, as the factors needed to implement compliance orders do not remain constant over time. Despite a second case, a lack of international attention – and thus lack of spotlight – pressuring an even less sympathetic government to compel action casts doubt on the extent to which Uruguay will comply with all the aspects of the Inter-American Court's new decision. Thus, while *Gelman* and *Maidanik* signalled the strength of the Court's jurisprudence with

respect to human rights issues, Uruguay has thus far fallen largely outside of ‘the justice cascade’, leaving victims still searching for *verdad y justicia*.